

HUMAN TRAFFICKING SAFE HARBOR AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies the Utah Criminal Code and Juvenile Court Act regarding a child subjected to prostitution or human trafficking.

Highlighted Provisions:

This bill:

- ▶ requires the Division of Child and Family Services to provide services to a child who is engaged in prostitution or sexual solicitation and has been referred to the division;
- ▶ provides that any child engaged in prostitution or sexual solicitation may not be subject to delinquency proceedings; and
- ▶ amends the definition of abuse in the Juvenile Court Act to include human trafficking of a child for sexual exploitation.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-1302, as last amended by Laws of Utah 2015, Chapter 363

78A-6-105, as last amended by Laws of Utah 2015, Chapter 274

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

30 Section 1. Section **76-10-1302** is amended to read:

31 **76-10-1302. Prostitution.**

32 (1) An individual is guilty of prostitution when the individual:

33 (a) engages in any sexual activity with another individual for a fee, or the functional
34 equivalent of a fee;

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

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

38 (2) (a) Except as provided in Subsection (2)(b) or Section **76-10-1309**, prostitution is a
39 class B misdemeanor.

40 (b) Except as provided in Section **76-10-1309**, an individual who is convicted a second
41 time, and on all subsequent convictions, of a subsequent offense of prostitution under this
42 section or under a local ordinance adopted in compliance with Section **76-10-1307**, is guilty of
43 a class A misdemeanor.

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

45 (i) "Child" [~~is as~~] means the same as that term is defined in Section **76-10-1301**.

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

48 (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to
49 commit or engage in any sexual activity with another person for a fee under Subsection
50 **76-10-1313**(1)(a) or (c).

51 (iv) "Division" means the Division of Child and Family Services created in Section
52 **62A-4a-103**.

53 (v) "Receiving center" [~~is as~~] means the same as that term is defined in Section
54 **62A-7-101**.

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

57 (i) conduct an investigation;

58 (ii) refer the child to the division;

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

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

61 ~~[(c) If a law enforcement officer refers a child to the division under Subsection~~

62 ~~(3)(b)(ii), the division shall:]~~

63 ~~[(i) check the division's records to verify whether law enforcement referred the child to~~

64 ~~the division under Subsection (3)(b)(ii) on a prior occasion; and]~~

65 ~~[(ii) provide the information described in Subsection (3)(c)(i) to the law enforcement~~

66 ~~officer.]~~

67 ~~[(d) If (c) When law enforcement has [not] referred the child to the division under~~

68 ~~Subsection (3)(b)(ii) [on at least one prior occasion;];~~

69 (i) the division shall provide services to the child under Title 62A, Chapter 4a, Child

70 and Family Services~~[(c) If law enforcement has referred the child to the division under~~

71 ~~Subsection (3)(b)(ii) on at least one prior occasion]; and~~

72 (ii) the child may not be ~~[subject]~~ subjected to delinquency proceedings under Title

73 62A, Chapter 7, Juvenile Justice Services, and Section [78A-6-601](#) through Section [78A-6-704](#).

74 Section 2. Section **78A-6-105** is amended to read:

75 **78A-6-105. Definitions.**

76 As used in this chapter:

77 (1) (a) "Abuse" means:

78 (i) nonaccidental harm of a child;

79 (ii) threatened harm of a child;

80 (iii) sexual exploitation; ~~[or]~~

81 (iv) sexual abuse~~[-];~~ or

82 (v) human trafficking of a child in violation of Section [76-5-308.5](#).

83 ~~[(v)]~~ (b) that a child's natural parent:

84 ~~[(A)]~~ (i) intentionally, knowingly, or recklessly causes the death of another parent of

85 the child;

86 ~~[(B)]~~ (ii) is identified by a law enforcement agency as the primary suspect in an
87 investigation for intentionally, knowingly, or recklessly causing the death of another parent of
88 the child; or

89 ~~[(C)]~~ (iii) is being prosecuted for or has been convicted of intentionally, knowingly, or
90 recklessly causing the death of another parent of the child.

91 ~~[(b)]~~ (c) "Abuse" does not include:

92 (i) reasonable discipline or management of a child, including withholding privileges;

93 (ii) conduct described in Section 76-2-401; or

94 (iii) the use of reasonable and necessary physical restraint or force on a child:

95 (A) in self-defense;

96 (B) in defense of others;

97 (C) to protect the child; or

98 (D) to remove a weapon in the possession of a child for any of the reasons described in

99 Subsections (1)(b)(iii)(A) through (C).

100 (2) "Abused child" means a child who has been subjected to abuse.

101 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
102 alleged in the petition have been proved. A finding of not competent to proceed pursuant to
103 Section 78A-6-1302 is not an adjudication.

104 (4) "Adult" means a person 18 years of age or over, except that a person 18 years or
105 over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall
106 be referred to as a minor.

107 (5) "Board" means the Board of Juvenile Court Judges.

108 (6) "Child" means a person under 18 years of age.

109 (7) "Child placement agency" means:

110 (a) a private agency licensed to receive a child for placement or adoption under this
111 code; or

112 (b) a private agency that receives a child for placement or adoption in another state,
113 which agency is licensed or approved where such license or approval is required by law.

114 (8) "Clandestine laboratory operation" means the same as that term is defined in
115 Section [58-37d-3](#).

116 (9) "Commit" means, unless specified otherwise:

117 (a) with respect to a child, to transfer legal custody; and

118 (b) with respect to a minor who is at least 18 years of age, to transfer custody.

119 (10) "Court" means the juvenile court.

120 (11) "Dependent child" includes a child who is homeless or without proper care
121 through no fault of the child's parent, guardian, or custodian.

122 (12) "Deprivation of custody" means transfer of legal custody by the court from a
123 parent or the parents or a previous legal custodian to another person, agency, or institution.

124 (13) "Detention" means home detention and secure detention as defined in Section
125 [62A-7-101](#) for the temporary care of a minor who requires secure custody in a physically
126 restricting facility:

127 (a) pending court disposition or transfer to another jurisdiction; or

128 (b) while under the continuing jurisdiction of the court.

129 (14) "Division" means the Division of Child and Family Services.

130 (15) "Formal referral" means a written report from a peace officer or other person
131 informing the court that a minor is or appears to be within the court's jurisdiction and that a
132 petition may be filed.

133 (16) "Group rehabilitation therapy" means psychological and social counseling of one
134 or more persons in the group, depending upon the recommendation of the therapist.

135 (17) "Guardianship of the person" includes the authority to consent to:

136 (a) marriage;

137 (b) enlistment in the armed forces;

138 (c) major medical, surgical, or psychiatric treatment; or

139 (d) legal custody, if legal custody is not vested in another person, agency, or institution.

140 (18) "Habitual truant" means the same as that term is defined in Section [53A-11-101](#).

141 (19) "Harm" means:

- 142 (a) physical or developmental injury or damage;
- 143 (b) emotional damage that results in a serious impairment in the child's growth,
144 development, behavior, or psychological functioning;
- 145 (c) sexual abuse; or
- 146 (d) sexual exploitation.
- 147 (20) (a) "Incest" means engaging in sexual intercourse with a person whom the
148 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
149 nephew, niece, or first cousin.
- 150 (b) The relationships described in Subsection (20)(a) include:
- 151 (i) blood relationships of the whole or half blood, without regard to legitimacy;
- 152 (ii) relationships of parent and child by adoption; and
- 153 (iii) relationships of stepparent and stepchild while the marriage creating the
154 relationship of a stepparent and stepchild exists.
- 155 (21) "Intellectual disability" means:
- 156 (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or
157 below on an individually administered IQ test, for infants, a clinical judgment of significantly
158 subaverage intellectual functioning;
- 159 (b) concurrent deficits or impairments in present adaptive functioning, the person's
160 effectiveness in meeting the standards expected for his or her age by the person's cultural
161 group, in at least two of the following areas: communication, self-care, home living,
162 social/interpersonal skills, use of community resources, self-direction, functional academic
163 skills, work, leisure, health, and safety; and
- 164 (c) the onset is before the person reaches the age of 18 years.
- 165 (22) "Legal custody" means a relationship embodying the following rights and duties:
- 166 (a) the right to physical custody of the minor;
- 167 (b) the right and duty to protect, train, and discipline the minor;
- 168 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
169 medical care;

- 170 (d) the right to determine where and with whom the minor shall live; and
171 (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- 172 (23) "Mental disorder" means a serious emotional and mental disturbance that severely
173 limits a minor's development and welfare over a significant period of time.
- 174 (24) "Minor" means:
175 (a) a child; or
176 (b) a person who is:
177 (i) at least 18 years of age and younger than 21 years of age; and
178 (ii) under the jurisdiction of the juvenile court.
- 179 (25) "Molestation" means that a person, with the intent to arouse or gratify the sexual
180 desire of any person:
181 (a) touches the anus or any part of the genitals of a child;
182 (b) takes indecent liberties with a child; or
183 (c) causes a child to take indecent liberties with the perpetrator or another.
- 184 (26) "Natural parent" means a minor's biological or adoptive parent, and includes the
185 minor's noncustodial parent.
- 186 (27) (a) "Neglect" means action or inaction causing:
187 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
188 Relinquishment of a Newborn Child;
189 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
190 guardian, or custodian;
191 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
192 subsistence, education, or medical care, or any other care necessary for the child's health,
193 safety, morals, or well-being; or
194 (iv) a child to be at risk of being neglected or abused because another child in the same
195 home is neglected or abused.
- 196 (b) The aspect of neglect relating to education, described in Subsection (27)(a)(iii),
197 means that, after receiving a notice of compulsory education violation under Section

198 [53A-11-101.5](#), or notice that a parent or guardian has failed to cooperate with school
199 authorities in a reasonable manner as required under Subsection [53A-11-101.7\(5\)\(a\)](#), the parent
200 or guardian fails to make a good faith effort to ensure that the child receives an appropriate
201 education.

202 (c) A parent or guardian legitimately practicing religious beliefs and who, for that
203 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

204 (d) (i) Notwithstanding Subsection (27)(a), a health care decision made for a child by
205 the child's parent or guardian does not constitute neglect unless the state or other party to the
206 proceeding shows, by clear and convincing evidence, that the health care decision is not
207 reasonable and informed.

208 (ii) Nothing in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising
209 the right to obtain a second health care opinion and from pursuing care and treatment pursuant
210 to the second health care opinion, as described in Section [78A-6-301.5](#).

211 (28) "Neglected child" means a child who has been subjected to neglect.

212 (29) "Nonjudicial adjustment" means closure of the case by the assigned probation
213 officer without judicial determination upon the consent in writing of:

214 (a) the assigned probation officer; and

215 (b) (i) the minor; or

216 (ii) the minor and the minor's parent, legal guardian, or custodian.

217 (30) "Not competent to proceed" means that a minor, due to a mental disorder,
218 intellectual disability, or related condition as defined, lacks the ability to:

219 (a) understand the nature of the proceedings against them or of the potential disposition
220 for the offense charged; or

221 (b) consult with counsel and participate in the proceedings against them with a
222 reasonable degree of rational understanding.

223 (31) "Physical abuse" means abuse that results in physical injury or damage to a child.

224 (32) "Probation" means a legal status created by court order following an adjudication
225 on the ground of a violation of law or under Section [78A-6-103](#), whereby the minor is

226 permitted to remain in the minor's home under prescribed conditions and under supervision by
227 the probation department or other agency designated by the court, subject to return to the court
228 for violation of any of the conditions prescribed.

229 (33) "Protective supervision" means a legal status created by court order following an
230 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
231 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
232 dependency is provided by the probation department or other agency designated by the court.

233 (34) "Related condition" means a condition closely related to intellectual disability in
234 accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah
235 Administrative Code.

236 (35) (a) "Residual parental rights and duties" means those rights and duties remaining
237 with the parent after legal custody or guardianship, or both, have been vested in another person
238 or agency, including:

- 239 (i) the responsibility for support;
- 240 (ii) the right to consent to adoption;
- 241 (iii) the right to determine the child's religious affiliation; and
- 242 (iv) the right to reasonable parent-time unless restricted by the court.

243 (b) If no guardian has been appointed, "residual parental rights and duties" also include
244 the right to consent to:

- 245 (i) marriage;
- 246 (ii) enlistment; and
- 247 (iii) major medical, surgical, or psychiatric treatment.

248 (36) "Secure facility" means any facility operated by or under contract with the
249 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
250 youth offenders committed to the division for custody and rehabilitation.

251 (37) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
252 child.

253 (38) "Severe neglect" means neglect that causes or threatens to cause serious harm to a

254 child.

255 (39) "Sexual abuse" means:

256 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
257 directed towards a child; or

258 (b) engaging in any conduct with a child that would constitute an offense under any of
259 the following, regardless of whether the person who engages in the conduct is actually charged
260 with, or convicted of, the offense:

261 (i) Title 76, Chapter 5, Part 4, Sexual Offenses;

262 (ii) child bigamy, Section 76-7-101.5;

263 (iii) incest, Section 76-7-102;

264 (iv) lewdness, Section 76-9-702;

265 (v) sexual battery, Section 76-9-702.1;

266 (vi) lewdness involving a child, Section 76-9-702.5; or

267 (vii) voyeurism, Section 76-9-702.7.

268 (40) "Sexual exploitation" means knowingly:

269 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

270 (i) pose in the nude for the purpose of sexual arousal of any person; or

271 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
272 filming, recording, or displaying in any way the sexual or simulated sexual conduct;

273 (b) displaying, distributing, possessing for the purpose of distribution, or selling
274 material depicting a child:

275 (i) in the nude, for the purpose of sexual arousal of any person; or

276 (ii) engaging in sexual or simulated sexual conduct; or

277 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
278 sexual exploitation of a minor, regardless of whether the person who engages in the conduct is
279 actually charged with, or convicted of, the offense.

280 (41) "Shelter" means the temporary care of a child in a physically unrestricted facility
281 pending court disposition or transfer to another jurisdiction.

282 (42) "State supervision" means a disposition that provides a more intensive level of
283 intervention than standard probation but is less intensive or restrictive than a community
284 placement with the Division of Juvenile Justice Services.

285 (43) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
286 substances.

287 (44) "Substantiated" means the same as that term is defined in Section 62A-4a-101.

288 (45) "Supported" means the same as that term is defined in Section 62A-4a-101.

289 (46) "Termination of parental rights" means the permanent elimination of all parental
290 rights and duties, including residual parental rights and duties, by court order.

291 (47) "Therapist" means:

292 (a) a person employed by a state division or agency for the purpose of conducting
293 psychological treatment and counseling of a minor in its custody; or

294 (b) any other person licensed or approved by the state for the purpose of conducting
295 psychological treatment and counseling.

296 (48) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.

297 (49) "Without merit" means the same as that term is defined in Section 62A-4a-101.