

1 **HUMAN TRAFFICKING MODIFICATIONS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Angela Romero**

5 Senate Sponsor: Wayne A. Harper

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions regarding human trafficking.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ authorizes the court to vacate a conviction for specified offenses if the individual
- 13 convicted is found to have acted under force, fraud, or coercion;
- 14 ▶ provides the process by which an individual may petition the court for vacatur of a
- 15 conviction for specified crimes; and
- 16 ▶ makes technical corrections.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **76-5-308**, as last amended by Laws of Utah 2016, Chapter 231

24 **77-22-2.5**, as last amended by Laws of Utah 2015, Chapter 99

25 **77-38-15**, as enacted by Laws of Utah 2014, Chapter 140

26 **77-40-112**, as renumbered and amended by Laws of Utah 2010, Chapter 283

27 ENACTS:



- 28 [76-2-501](#), Utah Code Annotated 1953
- 29 [76-2-502](#), Utah Code Annotated 1953
- 30 [76-2-503](#), Utah Code Annotated 1953
- 31 [77-40-108.5](#), Utah Code Annotated 1953



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

34 Section 1. Section **76-2-501** is enacted to read:

35 **Part 5. Victim Vacatur of Convictions**

36 **76-2-501. Definitions.**

37 As used in this part:

38 (1) "Conviction" means judgment by a criminal court on a verdict or finding of guilt
39 after a trial, a plea of guilt, or a plea of nolo contendere.

40 (2) "Official documentation" means:

41 (a) any stipulation provided by the prosecuting agency having jurisdiction over the
42 petitioner's offense of conviction;

43 (b) a copy of an approval notice or enforcement certification generated from a federal
44 immigration proceeding that shows the petitioner has been granted nonimmigrant status as a
45 victim of human trafficking; or

46 (c) a copy of a certification letter from the United States Department of Health and
47 Human Services that shows the petitioner has been certified as a victim of human trafficking
48 under the Trafficking Victims Protection Act of 2000.

49 (3) "Petitioner" means a person convicted of any offense listed in Subsection
50 [76-2-502\(2\)](#).

51 Section 2. Section **76-2-502** is enacted to read:

52 **76-2-502. Victim vacatur.**

53 (1) Notwithstanding any provisions of Title 77, Chapter 40, Utah Expungement Act,
54 after the entry of a conviction under the provisions of Subsection (2) and pursuant to the
55 procedures established in Section [76-2-503](#), the court in which a conviction was entered may
56 vacate a conviction if the petitioner is found to have acted under force, fraud, or coercion as
57 defined in Section [76-5-308](#).

58 (2) A person convicted of any of the following offenses may petition for vacatur under

59 this part:

- 60 (a) Section 58-37-8, possession of a controlled substance;
- 61 (b) Section 74-10-1304, aiding prostitution;
- 62 (c) Section 76-6-206, criminal trespass;
- 63 (d) Section 76-6-413, theft;
- 64 (e) Section 76-6-502, possession of forged writing or device for writing;
- 65 (f) Sections 76-6-602 through 76-6-608, retail theft;
- 66 (g) Subsection 76-6-1105(2)(a)(i), unlawful possession of another's identification

67 document;

- 68 (h) Section 76-9-702, lewdness;
- 69 (i) Section 76-10-1302, prostitution; or
- 70 (j) Section 76-10-1313, sexual solicitation.

71 Section 3. Section **76-2-503** is enacted to read:

72 **76-2-503. Vacatur of victim's conviction.**

73 (1) A petitioner or the prosecuting government agency with jurisdiction over the
74 petitioner's conviction may file a motion for vacatur in the court of conviction.

75 (2) Upon the filing of a motion for vacatur, the court of conviction shall set a hearing
76 to review the motion within a reasonable time, but not less than 60 days after the filing of the
77 motion.

78 (3) At the hearing, the moving party shall show by clear and convincing evidence that
79 the petitioner committed the offense of conviction under force, fraud, or coercion, as defined in
80 Section 76-5-308.

81 (4) (a) The moving party may show that the petitioner acted under force, fraud, or
82 coercion, as defined in Section 76-5-308, through official documentation showing that the
83 petitioner acted under force, fraud, or coercion at the time of the offense for which the
84 petitioner is seeking vacatur.

85 (b) Official documentation shall create a rebuttable presumption that the petitioner
86 acted under force, fraud, or coercion, but is not required to establish the grounds for granting a
87 motion for vacatur under this section.

88 (5) (a) If the court finds, by clear and convincing evidence, that the petitioner acted
89 under force, fraud, or coercion, the court shall grant the motion for vacatur.

90 (b) If the court does not find that the petitioner acted under force, fraud, or coercion,
91 the court shall deny the motion for vacatur.

92 (6) In accordance with Utah Rules of Criminal Procedure, Rule 3, the moving party
93 shall provide notice of all motions under this section to:

94 (a) the prosecuting agency with jurisdiction over the conviction;

95 (b) the court of conviction; and

96 (c) any victim of the original offense who is entitled to notice, pursuant to Section
97 [77-38-3](#).

98 (7) Upon granting a motion for vacatur, the court shall:

99 (a) vacate the conviction;

100 (b) strike the adjudication of guilt; and

101 (c) issue an order for vacatur of the record of the criminal proceedings.

102 (8) The provisions of this section apply retroactively to all arrests and convictions
103 regardless of the date on which the arrests were made or convictions were entered.

104 Section 4. Section **76-5-308** is amended to read:

105 **76-5-308. Human trafficking -- Human smuggling.**

106 (1) An actor commits human trafficking for forced labor or forced sexual exploitation
107 if the actor recruits, harbors, transports, obtains, patronizes, or solicits a person through the use
108 of force, fraud, or coercion [~~by means of~~], which may include:

109 (a) threatening serious harm to, or physical restraint against, that person or a third
110 person;

111 (b) destroying, concealing, removing, confiscating, or possessing any passport,
112 immigration document, or other government-issued identification document;

113 (c) abusing or threatening abuse of the law or legal process against the person or a third
114 person;

115 (d) using a condition of a person being a debtor due to a pledge of the debtor's personal
116 services or the personal services of a person under the control of the debtor as a security for
117 debt where the reasonable value of the services is not applied toward the liquidation of the debt
118 or the length and nature of those services are not respectively limited and defined; [~~or~~]

119 (e) using a condition of servitude by means of any scheme, plan, or pattern intended to
120 cause a person to believe that if the person did not enter into or continue in a condition of

121 servitude, that person or a third person would suffer serious harm or physical restraint, or
 122 would be threatened with abuse of legal process[;]; or

123 (f) creating or exploiting a relationship where the person is dependent on the actor.

124 (2) (a) Human trafficking for forced labor includes forced labor in industrial facilities,
 125 sweatshops, households, agricultural enterprises, and any other workplace.

126 (b) Human trafficking for forced sexual exploitation includes all forms of forced
 127 commercial sexual activity, [including] which may include the following conduct when the
 128 person acts under force, fraud, or coercion:

129 (i) ~~[forced]~~ sexually explicit performance[;];

130 (ii) ~~[forced]~~ prostitution[;];

131 (iii) ~~[forced]~~ participation in the production of pornography[;];

132 (iv) ~~[forced]~~ performance in strip clubs[;]; and

133 (v) ~~[forced]~~ exotic dancing or display.

134 (3) A person commits human smuggling by transporting or procuring the transportation
 135 for one or more persons for a commercial purpose, knowing or having reason to know that the
 136 person or persons transported or to be transported are not:

137 (a) citizens of the United States;

138 (b) permanent resident aliens; or

139 (c) otherwise lawfully in this state or entitled to be in this state.

140 Section 5. Section **77-22-2.5** is amended to read:

141 **77-22-2.5. Court orders for criminal investigations for records concerning an**
 142 **electronic communications system or service or remote computing service -- Content --**
 143 **Fee for providing information.**

144 (1) As used in this section:

145 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,
 146 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,
 147 radio, electromagnetic, photoelectronic, or photooptical system.

148 (ii) "Electronic communication" does not include:

149 (A) any wire or oral communication;

150 (B) any communication made through a tone-only paging device;

151 (C) any communication from a tracking device; or

152 (D) electronic funds transfer information stored by a financial institution in a
153 communications system used for the electronic storage and transfer of funds.

154 (b) "Electronic communications service" means any service which provides for users
155 the ability to send or receive wire or electronic communications.

156 (c) "Electronic communications system" means any wire, radio, electromagnetic,
157 photooptical, or photoelectronic facilities for the transmission of wire or electronic
158 communications, and any computer facilities or related electronic equipment for the electronic
159 storage of the communication.

160 (d) "Internet service provider" has the same definition as in Section 76-10-1230.

161 (e) "Prosecutor" has the same definition as in Section 77-22-2.

162 (f) "Remote computing service" means the provision to the public of computer storage
163 or processing services by means of an electronic communications system.

164 (g) "Sexual offense against a minor" means:

165 (i) sexual exploitation of a minor as defined in Section 76-5b-201 or attempted sexual
166 exploitation of a minor;

167 (ii) a sexual offense or attempted sexual offense committed against a minor in violation
168 of Title 76, Chapter 5, Part 4, Sexual Offenses;

169 (iii) dealing in or attempting to deal in material harmful to a minor in violation of
170 Section 76-10-1206; [or]

171 (iv) enticement of a minor or attempted enticement of a minor in violation of Section
172 76-4-401[-]; or

173 (v) human trafficking of a child in violation of Section 76-5-308.5.

174 (2) When a law enforcement agency is investigating a sexual offense against a minor,
175 an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under
176 Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or
177 service or remote computing service has been used in the commission of a criminal offense, a
178 law enforcement agent shall:

179 (a) articulate specific facts showing reasonable grounds to believe that the records or
180 other information sought, as designated in Subsections (1)(c)(i) through (v), are relevant and
181 material to an ongoing investigation;

182 (b) present the request to a prosecutor for review and authorization to proceed; and

183 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. 2703
184 and 18 U.S.C. 2702, to the electronic communications system or service or remote computing
185 service provider that owns or controls the Internet protocol address, websites, email address, or
186 service to a specific telephone number, requiring the production of the following information,
187 if available, upon providing in the court order the Internet protocol address, email address,
188 telephone number, or other identifier, and the dates and times the address, telephone number,
189 or other identifier was suspected of being used in the commission of the offense:

- 190 (i) names of subscribers, service customers, and users;
- 191 (ii) addresses of subscribers, service customers, and users;
- 192 (iii) records of session times and durations;
- 193 (iv) length of service, including the start date and types of service utilized; and
- 194 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,
195 including any temporarily assigned network address.

196 (3) A court order issued under this section shall state that the electronic
197 communications system or service or remote computing service provider shall produce any
198 records under Subsections (2)(c)(i) through (v) that are reasonably relevant to the investigation
199 of the suspected criminal activity or offense as described in the court order.

200 (4) (a) An electronic communications system or service or remote computing service
201 provider that provides information in response to a court order issued under this section may
202 charge a fee, not to exceed the actual cost, for providing the information.

203 (b) The law enforcement agency conducting the investigation shall pay the fee.

204 (5) The electronic communications system or service or remote computing service
205 provider served with or responding to the court order may not disclose the court order to the
206 account holder identified pursuant to the court order for a period of 90 days.

207 (6) If the electronic communications system or service or remote computing service
208 provider served with the court order does not own or control the Internet protocol address,
209 websites, or email address, or provide service for the telephone number that is the subject of
210 the court order, the provider shall notify the investigating law enforcement agency that it does
211 not have the information.

212 (7) There is no cause of action against any provider or wire or electronic
213 communication service, or its officers, employees, agents, or other specified persons, for

214 providing information, facilities, or assistance in accordance with the terms of the court order
215 issued under this section or statutory authorization.

216 (8) (a) A court order issued under this section is subject to the provisions of Title 77,
217 Chapter 23b, Access to Electronic Communications.

218 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,
219 Access to Electronic Communications, apply to providers and subscribers subject to a court
220 order issued under this section.

221 (9) Every prosecutorial agency shall annually on or before February 15 report to the
222 Commission on Criminal and Juvenile Justice:

223 (a) the number of requests for court orders authorized by the prosecutorial agency;

224 (b) the number of orders issued by the court and the criminal offense, pursuant to
225 Subsection (2), each order was used to investigate; and

226 (c) if the court order led to criminal charges being filed, the type and number of
227 offenses charged.

228 Section 6. Section **77-38-15** is amended to read:

229 **77-38-15. Civil action against human traffickers and human smugglers.**

230 (1) A victim of a person that commits the offense of human trafficking or human
231 smuggling under Section [76-5-308](#), human trafficking of a child under Section [76-5-308.5](#), or
232 aggravated human trafficking or aggravated human smuggling under Section [76-5-310](#), may
233 bring a civil action against that person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

258 (b) the victim resides; or

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

260 (8) If the victim is deceased or otherwise unable to represent the victim's own interests
261 in court, a legal guardian, family member, representative of the victim, or court appointee may
262 bring an action under this section on behalf of the victim.

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

265 Section 7. Section **77-40-108.5** is enacted to read:

266 **77-40-108.5. Distribution for order for vacatur.**

267 (1) A person who receives an order for vacatur under Sections [76-2-502](#) and [76-2-503](#)
268 shall be responsible for delivering a copy of the order for vacatur to all affected criminal justice
269 agencies and officials including the court, arresting agency, booking agency, prosecuting
270 agency, Department of Corrections, and the bureau.

271 (2) In order to complete delivery of the order for vacatur to the bureau, the petitioner
272 shall complete and attach to the order for vacatur an application for a certificate of eligibility
273 for expungement, including identifying information and fingerprints, as provided in Subsection
274 [77-40-103\(1\)](#).

275 (3) The bureau shall treat the order for vacatur and attached certificate of eligibility for

276 expungement the same as a valid order for expungement under Section 77-40-108, except as
277 provided in this section.

278 (4) Unless otherwise provided by law or ordered by a court of competent jurisdiction to
279 respond differently, a person who has received a vacatur of conviction under Sections 76-2-502
280 and 76-2-503, may respond to any inquiry as though the conviction did not occur.

281 (5) The bureau shall forward a copy of the order for vacatur to the Federal Bureau of
282 Investigation.

283 (6) An agency receiving an order for vacatur shall delete the petitioner's identifying
284 information contained in records in the agency's possession relating to the incident for which
285 vacatur is ordered.

286 (7) A government agency or official may not divulge information or records that have
287 been deleted regarding the petitioner for vacatur contained in a record of arrest, investigation,
288 detention, or conviction after receiving an order for vacatur to any person or agency, except for
289 the petitioner for vacatur.

290 (8) The bureau may not count vacated convictions against any future expungement
291 eligibility.

292 Section 8. Section 77-40-112 is amended to read:

293 **77-40-112. Penalty.**

294 ~~[Any person who willfully violates any prohibition in this chapter is guilty of a class A~~
295 ~~misdemeanor unless the prohibition specifically indicates a different penalty.] Any person who~~
296 knowingly or intentionally discloses any identifying information from any record of conviction
297 that has been pardoned, expunged, or vacated, unless allowed by law, is guilty of a class A
298 misdemeanor.

Legislative Review Note
Office of Legislative Research and General Counsel