

Representative Angela Romero proposes the following substitute bill:

HUMAN TRAFFICKING MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies provisions regarding human trafficking.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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 [78B-9-104](#), as last amended by Laws of Utah 2010, Chapter 153
 28 [78B-9-106](#), as last amended by Laws of Utah 2010, Chapter 48
 29 [78B-9-107](#), as last amended by Laws of Utah 2008, Chapters 288, 358 and renumbered
 30 and amended by Laws of Utah 2008, Chapter 3
 31 [78B-9-108](#), as last amended by Laws of Utah 2008, Chapter 288 and renumbered and
 32 amended by Laws of Utah 2008, Chapter 3

33 ENACTS:

34 [77-40-108.5](#), Utah Code Annotated 1953



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

37 Section 1. Section **76-5-308** is amended to read:

38 **76-5-308. Human trafficking -- Human smuggling.**

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

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

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

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

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

52 (e) using a condition of servitude by means of any scheme, plan, or pattern intended to
 53 cause a person to believe that if the person did not enter into or continue in a condition of
 54 servitude, that person or a third person would suffer serious harm or physical restraint, or
 55 would be threatened with abuse of legal process~~[-];~~ or

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

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

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

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

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

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

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

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

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

70 (a) citizens of the United States;

71 (b) permanent resident aliens; or

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

73 Section 2. Section ~~77-22-2.5~~ is amended to read:

74 **77-22-2.5. Court orders for criminal investigations for records concerning an**
75 **electronic communications system or service or remote computing service -- Content --**
76 **Fee for providing information.**

77 (1) As used in this section:

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

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

82 (A) any wire or oral communication;

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

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

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

87 (b) "Electronic communications service" means any service which provides for users

88 the ability to send or receive wire or electronic communications.

89 (c) "Electronic communications system" means any wire, radio, electromagnetic,
90 photooptical, or photoelectronic facilities for the transmission of wire or electronic
91 communications, and any computer facilities or related electronic equipment for the electronic
92 storage of the communication.

93 (d) "Internet service provider" has the same definition as in Section [76-10-1230](#).

94 (e) "Prosecutor" has the same definition as in Section [77-22-2](#).

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

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

98 (i) sexual exploitation of a minor as defined in Section [76-5b-201](#) or attempted sexual
99 exploitation of a minor;

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

102 (iii) dealing in or attempting to deal in material harmful to a minor in violation of
103 Section [76-10-1206](#); [~~or~~]

104 (iv) enticement of a minor or attempted enticement of a minor in violation of Section
105 [76-4-401](#)[-]; or

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

107 (2) When a law enforcement agency is investigating a sexual offense against a minor,
108 an offense of stalking under Section [76-5-106.5](#), or an offense of child kidnapping under
109 Section [76-5-301.1](#), and has reasonable suspicion that an electronic communications system or
110 service or remote computing service has been used in the commission of a criminal offense, a
111 law enforcement agent shall:

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

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

116 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. 2703
117 and 18 U.S.C. 2702, to the electronic communications system or service or remote computing
118 service provider that owns or controls the Internet protocol address, websites, email address, or

119 service to a specific telephone number, requiring the production of the following information,
120 if available, upon providing in the court order the Internet protocol address, email address,
121 telephone number, or other identifier, and the dates and times the address, telephone number,
122 or other identifier was suspected of being used in the commission of the offense:

- 123 (i) names of subscribers, service customers, and users;
- 124 (ii) addresses of subscribers, service customers, and users;
- 125 (iii) records of session times and durations;
- 126 (iv) length of service, including the start date and types of service utilized; and
- 127 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,
128 including any temporarily assigned network address.

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

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

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

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

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

145 (7) There is no cause of action against any provider or wire or electronic
146 communication service, or its officers, employees, agents, or other specified persons, for
147 providing information, facilities, or assistance in accordance with the terms of the court order
148 issued under this section or statutory authorization.

149 (8) (a) A court order issued under this section is subject to the provisions of Title 77,

150 Chapter 23b, Access to Electronic Communications.

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

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

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

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

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

161 Section 3. Section **77-38-15** is amended to read:

162 **77-38-15. Civil action against human traffickers and human smugglers.**

163 (1) A victim of a person that commits the offense of human trafficking or human
164 smuggling under Section [76-5-308](#), human trafficking of a child under Section [76-5-308.5](#), or
165 aggravated human trafficking or aggravated human smuggling under Section [76-5-310](#), may
166 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 later 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 court appointee may
195 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.

198 Section 4. Section **77-40-108.5** is enacted to read:

199 **77-40-108.5. Distribution for order for vacatur.**

200 (1) A person who receives an order for vacatur under Subsection [78B-9-108\(2\)](#) shall be
201 responsible for delivering a copy of the order for vacatur to all affected criminal justice
202 agencies and officials including the court, arresting agency, booking agency, prosecuting
203 agency, Department of Corrections, and the bureau.

204 (2) In order to complete delivery of the order for vacatur to the bureau, the petitioner
205 shall complete and attach to the order for vacatur an application for a certificate of eligibility
206 for expungement, including identifying information and fingerprints, as provided in Subsection
207 [77-40-103\(1\)](#).

208 (3) The bureau shall treat the order for vacatur and attached certificate of eligibility for
209 expungement the same as a valid order for expungement under Section [77-40-108](#), except as
210 provided in this section.

211 (4) Unless otherwise provided by law or ordered by a court of competent jurisdiction to

212 respond differently, a person who has received a vacatur of conviction under Section
213 78B-9-104(9)(1), may respond to any inquiry as though the conviction did not occur.

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

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

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

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

225 Section 5. Section **77-40-112** is amended to read:

226 **77-40-112. Penalty.**

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

232 Section 6. Section **78B-9-104** is amended to read:

233 **78B-9-104. Grounds for relief -- Retroactivity of rule.**

234 (1) Unless precluded by Section **78B-9-106** or **78B-9-107**, a person who has been
235 convicted and sentenced for a criminal offense may file an action in the district court of
236 original jurisdiction for post-conviction relief to vacate or modify the conviction or sentence
237 upon the following grounds:

238 (a) the conviction was obtained or the sentence was imposed in violation of the United
239 States Constitution or Utah Constitution;

240 (b) the conviction was obtained or the sentence was imposed under a statute that is in
241 violation of the United States Constitution or Utah Constitution, or the conduct for which the
242 petitioner was prosecuted is constitutionally protected;

243 (c) the sentence was imposed or probation was revoked in violation of the controlling
244 statutory provisions;

245 (d) the petitioner had ineffective assistance of counsel in violation of the United States
246 Constitution or Utah Constitution;

247 (e) newly discovered material evidence exists that requires the court to vacate the
248 conviction or sentence, because:

249 (i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of
250 trial or sentencing or in time to include the evidence in any previously filed post-trial motion or
251 post-conviction proceeding, and the evidence could not have been discovered through the
252 exercise of reasonable diligence;

253 (ii) the material evidence is not merely cumulative of evidence that was known;

254 (iii) the material evidence is not merely impeachment evidence; and

255 (iv) viewed with all the other evidence, the newly discovered material evidence
256 demonstrates that no reasonable trier of fact could have found the petitioner guilty of the
257 offense or subject to the sentence received; or

258 (f) the petitioner can prove entitlement to relief under a rule announced by the United
259 States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after conviction
260 and sentence became final on direct appeal, and that:

261 (i) the rule was dictated by precedent existing at the time the petitioner's conviction or
262 sentence became final; or

263 (ii) the rule decriminalizes the conduct that comprises the elements of the crime for
264 which the petitioner was convicted.

265 (g) the petitioner committed any of the following offenses while subject to force, fraud,
266 or coercion, as defined in Section 76-5-308:

267 (i) Section 58-37-8, possession of a controlled substance;

268 (ii) Section 74-10-1304, aiding prostitution;

269 (iii) Section 76-6-206, criminal trespass;

270 (iv) Section 76-6-413, theft;

271 (v) Section 76-6-502, possession of forged writing or device for writing;

272 (vi) Sections 76-6-602 through 76-6-608, retail theft;

273 (vii) Subsection 76-6-1105(2)(a)(i), unlawful possession of another's identification

274 document;

275 (viii) Section 76-9-702, lewdness;

276 (ix) Section 76-10-1302, prostitution; or

277 (x) Section 76-10-1313, sexual solicitation.

278 (2) The court may not grant relief from a conviction or sentence unless the petitioner
279 establishes that there would be a reasonable likelihood of a more favorable outcome in light of
280 the facts proved in the post-conviction proceeding, viewed with the evidence and facts
281 introduced at trial or during sentencing.

282 (3) The court may not grant relief from a conviction based on a claim that the petitioner
283 is innocent of the crime for which convicted except as provided in Title 78B, Chapter 9, Part 3,
284 Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.
285 Claims under Part 3, Postconviction Testing of DNA or Part 4, Postconviction Determination
286 of Factual Innocence of this chapter may not be filed as part of a petition under this part, but
287 shall be filed separately and in conformity with the provisions of Part 3, Postconviction Testing
288 of DNA or Part 4, Postconviction Determination of Factual Innocence.

289 Section 7. Section **78B-9-106** is amended to read:

290 **78B-9-106. Preclusion of relief -- Exception.**

291 (1) A person is not eligible for relief under this chapter upon any ground that:

292 (a) may still be raised on direct appeal or by a post-trial motion;

293 (b) was raised or addressed at trial or on appeal;

294 (c) could have been but was not raised at trial or on appeal;

295 (d) was raised or addressed in any previous request for post-conviction relief or could
296 have been, but was not, raised in a previous request for post-conviction relief; or

297 (e) is barred by the limitation period established in Section **78B-9-107**.

298 (2) (a) The state may raise any of the procedural bars or time bar at any time, including
299 during the state's appeal from an order granting post-conviction relief, unless the court
300 determines that the state should have raised the time bar or procedural bar at an earlier time.

301 (b) Any court may raise a procedural bar or time bar on its own motion, provided that it
302 gives the parties notice and an opportunity to be heard.

303 (3) (a) Notwithstanding Subsection (1)(c), a person may be eligible for relief on a basis
304 that the ground could have been but was not raised at trial or on appeal, if the failure to raise

305 that ground was due to ineffective assistance of counsel[-]; or

306 (b) Notwithstanding Subsections (1)(c) and (1)(d), a person may be eligible for relief
307 on a basis that the ground could have been but was not raised at trial, on appeal, or in a
308 previous request for post-conviction relief, if the failure to raise that ground was due to force,
309 fraud, or coercion as defined in Section [76-5-308](#).

310 (4) This section authorizes a merits review only to the extent required to address the
311 exception set forth in Subsection (3).

312 Section 8. Section **78B-9-107** is amended to read:

313 **78B-9-107. Statute of limitations for postconviction relief.**

314 (1) A petitioner is entitled to relief only if the petition is filed within one year after the
315 cause of action has accrued.

316 (2) For purposes of this section, the cause of action accrues on the latest of the
317 following dates:

318 (a) the last day for filing an appeal from the entry of the final judgment of conviction, if
319 no appeal is taken;

320 (b) the entry of the decision of the appellate court which has jurisdiction over the case,
321 if an appeal is taken;

322 (c) the last day for filing a petition for writ of certiorari in the Utah Supreme Court or
323 the United States Supreme Court, if no petition for writ of certiorari is filed;

324 (d) the entry of the denial of the petition for writ of certiorari or the entry of the
325 decision on the petition for certiorari review, if a petition for writ of certiorari is filed;

326 (e) the date on which petitioner knew or should have known, in the exercise of
327 reasonable diligence, of evidentiary facts on which the petition is based; or

328 (f) the date on which the new rule described in Subsection [78B-9-104\(1\)\(f\)](#) is
329 established.

330 (3) The limitations period is tolled for any period during which the petitioner was
331 prevented from filing a petition due to state action in violation of the United States
332 Constitution, or due to physical or mental incapacity, or for claims arising under Subsection
333 [78B-9-104\(1\)\(g\)](#), due to force, fraud, or coercion as defined in Section [76-5-308](#). The
334 petitioner has the burden of proving by a preponderance of the evidence that the petitioner is
335 entitled to relief under this Subsection (3).

336 (4) The statute of limitations is tolled during the pendency of the outcome of a petition
337 asserting:

338 (a) exoneration through DNA testing under Section [78B-9-303](#); or

339 (b) factual innocence under Section [78B-9-401](#).

340 (5) Sections [77-19-8](#), [78B-2-104](#), and [78B-2-111](#) do not extend the limitations period
341 established in this section.

342 Section 9. Section **78B-9-108** is amended to read:

343 **78B-9-108. Effect of granting relief -- Notice.**

344 (1) If the court grants the petitioner's request for relief, except requests for relief under
345 Subsection [78B-9-104\(1\)\(g\)](#), it shall either:

346 (a) modify the original conviction or sentence; or

347 (b) vacate the original conviction or sentence and order a new trial or sentencing
348 proceeding as appropriate.

349 (2) If the court grants the petitioner's request for relief under Subsection
350 [78B-9-104\(1\)\(g\)](#), the court shall:

351 (a) vacate the original conviction and sentence; and

352 (b) order the petitioner's records expunged pursuant to Section [77-40-108.5](#).

353 [~~2~~] (3) (a) If the petitioner is serving a felony sentence, the order shall be stayed for
354 five days. Within the stay period, the respondent shall give written notice to the court and the
355 petitioner that the respondent will pursue a new trial or sentencing proceedings, appeal the
356 order, or take no action.

357 (b) If the respondent fails to provide notice or gives notice at any time during the stay
358 period that it intends to take no action, the court shall lift the stay and deliver the order to the
359 custodian of the petitioner.

360 (c) If the respondent gives notice of intent to appeal the court's decision, the stay
361 provided for by Subsection (2)(a) shall remain in effect until the appeal concludes, including
362 any petitions for rehearing or for discretionary review by a higher court. The court may lift the
363 stay if the petitioner can make the showing required for a certificate of probable cause under
364 Section [77-20-10](#) and URCP 27.

365 (d) If the respondent gives notice that it intends to retry or resentence the petitioner, the
366 trial court may order any supplementary orders as to arraignment, trial, sentencing, custody,

367 bail, discharge, or other matters that may be necessary.