

SOLICITATION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Mike Winder

LONG TITLE

General Description:

This bill makes changes to simplify the prosecution of prostitution.

Highlighted Provisions:

This bill:

- ▶ renames "house of prostitution" to "place of prostitution";
- ▶ updates the definition of "sexual activity";
- ▶ adds arranging a meeting for the purpose of sexual activity to the crime of prostitution;
- ▶ increases some penalties;
- ▶ requires the maximum fine be ordered upon conviction; and
- ▶ prohibits waiving or suspending the fine.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-1301, as last amended by Laws of Utah 2013, Chapter 196

76-10-1302, as last amended by Laws of Utah 2016, Chapter 109

76-10-1303, as last amended by Laws of Utah 2015, Chapter 363

76-10-1304, as last amended by Laws of Utah 2012, Chapter 56

76-10-1305, as last amended by Laws of Utah 2000, Chapter 1

30 76-10-1306, as last amended by Laws of Utah 2013, Chapter 196

31 76-10-1313, as last amended by Laws of Utah 2015, Chapter 363

32

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

34 Section 1. Section 76-10-1301 is amended to read:

35 **76-10-1301. Definitions.**

36 For the purposes of this part:

37 (1) "Child" is a person younger than 18 years of age.

38 [~~(3)~~] (2) "Inmate" means a person who engages in prostitution in or through the agency
39 of a [~~house~~] place of prostitution.

40 [~~(2)~~] (3) [~~"House~~] "Place of prostitution" means a place or business where prostitution
41 or promotion of prostitution is arranged, regularly carried on, or attempted by one or more
42 persons under the control, management, or supervision of another.

43 (4) "Public place" means any place to which the public or any substantial group of the
44 public has access.

45 (5) "Sexual activity" means, regardless of the gender of either participant:

46 (a) acts of masturbation, sexual intercourse, or any sexual act involving the genitals of
47 one person and the mouth or anus of another person[~~, regardless of the sex of either~~
48 participant.]; or

49 (b) touching the genitals, female breast, or anus of one person with any other body part
50 of another person with the intent to sexually arouse or gratify either person.

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

52 **76-10-1302. Prostitution.**

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

54 (a) engages, offers, or agrees to engage in any sexual activity with another individual
55 for a fee, or the functional equivalent of a fee;

56 [~~(b) is an inmate of a house of prostitution; or]~~

57 (b) takes steps in arranging a meeting through any form of advertising, agreeing to

58 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee
59 or the functional equivalent of a fee; or

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

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

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

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

69 (i) "Child" means the same as that term is defined in Section 76-10-1301.

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

72 (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to
73 commit or engage in any sexual activity with another person for a fee or the functional
74 equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

75 (iv) "Division" means the Division of Child and Family Services created in Section
76 62A-4a-103.

77 (v) "Receiving center" means the same as that term is defined in Section 62A-7-101.

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

80 (i) conduct an investigation;

81 (ii) refer the child to the division;

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

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

84 (c) When law enforcement has referred the child to the division under Subsection
85 (3)(b)(ii):

86 (i) the division shall provide services to the child under Title 62A, Chapter 4a, Child
87 and Family Services; and

88 (ii) the child may not be subjected to delinquency proceedings under Title 62A,
89 Chapter 7, Juvenile Justice Services, and Section 78A-6-601 through Section 78A-6-704.

90 Section 3. Section 76-10-1303 is amended to read:

91 **76-10-1303. Patronizing a prostitute.**

92 (1) A person is guilty of patronizing a prostitute when the person:

93 (a) pays or offers or agrees to pay another person a fee, or the functional equivalent of a
94 fee, for the purpose of engaging in an act of sexual activity; or

95 (b) enters or remains in a ~~house~~ place of prostitution for the purpose of engaging in
96 sexual activity.

97 (2) Patronizing a prostitute is a class ~~B~~ A misdemeanor, except as provided in
98 Subsection (3) ~~or~~, (4), or (5) and Section 76-10-1309.

99 (3) A violation of this section that is preceded by a conviction under this section or a
100 conviction under local ordinance adopted under Section 76-10-1307 is a class A misdemeanor.

101 (4) A third violation of this section or a local ordinance adopted under Section
102 76-10-1307 is a third degree felony.

103 ~~(4)~~ (5) If the patronizing of a prostitute under Subsection (1)(a) involves a child as
104 the other person, a violation of Subsection (1)(a) is a third degree felony.

105 (6) Upon a conviction for a violation of this section, the court shall order the maximum
106 fine amount and may not waive or suspend the fine.

107 Section 4. Section 76-10-1304 is amended to read:

108 **76-10-1304. Aiding prostitution.**

109 (1) A person is guilty of aiding prostitution if the person:

110 (a) (i) solicits a person to patronize a prostitute;

111 (ii) procures or attempts to procure a prostitute for a patron; or

112 (iii) leases, operates, or otherwise permits a place controlled by the actor, alone or in
113 association with another, to be used for prostitution or the promotion of prostitution; or

114 (iv) provides any service or commits any act that enables another person to commit a
115 violation of this Subsection (1)(a) or facilitates another person's ability to commit any violation
116 of this Subsection (1)(a); or

117 (b) solicits, receives, or agrees to receive any benefit for committing any of the acts
118 prohibited by Subsection (1)(a).

119 (2) Aiding prostitution is a class ~~[B]~~ A misdemeanor. However, a person who is
120 convicted a second time, and on all subsequent convictions, under this section or under a local
121 ordinance adopted in compliance with Section 76-10-1307 is guilty of a ~~[class A misdemeanor]~~
122 third degree felony.

123 (3) Upon a conviction for a violation of this section, the court shall order the maximum
124 fine amount and may not waive or suspend the fine.

125 Section 5. Section 76-10-1305 is amended to read:

126 **76-10-1305. Exploiting prostitution.**

127 (1) A person is guilty of exploiting prostitution if ~~[he]~~ the person:

128 (a) procures ~~[an inmate]~~ a person for a ~~[house]~~ place of prostitution ~~[or place in a house~~
129 ~~of prostitution for one who would be an inmate];~~

130 (b) encourages, induces, or otherwise purposely causes another to become or remain a
131 prostitute;

132 (c) transports a person into or within this state with a purpose to promote that person's
133 engaging in prostitution or procuring or paying for transportation with that purpose;

134 (d) not being a child or legal dependent of a prostitute, shares the proceeds of
135 prostitution with a prostitute pursuant to their understanding that he is to share therein; or

136 (e) owns, controls, manages, supervises, or otherwise keeps, alone or in association
137 with another, a ~~[house]~~ place of prostitution or a business where prostitution ~~[business]~~ occurs
138 or is arranged, encouraged, supported, or promoted.

139 (2) Exploiting prostitution is a felony of the third degree.

140 (3) Upon a conviction for a violation of this section, the court shall order the maximum
141 fine amount and may not waive or suspend the fine.

142 Section 6. Section **76-10-1306** is amended to read:

143 **76-10-1306. Aggravated exploitation of prostitution.**

144 (1) A person is guilty of aggravated exploitation if:

145 (a) in committing an act of exploiting prostitution, as defined in Section **76-10-1305**,
146 the person uses any force, threat, or fear against any person;

147 (b) the person procured, transported, or persuaded or with whom the person shares the
148 proceeds of prostitution is a child or is the spouse of the actor; or

149 (c) in the course of committing exploitation of prostitution, a violation of Section
150 **76-10-1305**, the person commits human trafficking or human smuggling, a violation of Section
151 **76-5-308**.

152 (2) Aggravated exploitation of prostitution is a second degree felony, except under
153 Subsection (3).

154 (3) Aggravated exploitation of prostitution involving a child is a first degree felony.

155 (4) Upon a conviction for a violation of this section, the court shall order the maximum
156 fine amount and may not waive or suspend the fine.

157 Section 7. Section **76-10-1313** is amended to read:

158 **76-10-1313. Sexual solicitation -- Penalty.**

159 (1) A person is guilty of sexual solicitation when the person:

160 (a) offers or agrees to commit any sexual activity with another person for a fee, or the
161 functional equivalent of a fee;

162 (b) pays or offers or agrees to pay a fee or the functional equivalent of a fee to another
163 person to commit any sexual activity; or

164 (c) with intent to engage in sexual activity for a fee or the functional equivalent of a fee
165 or to pay another person to commit any sexual activity for a fee or the functional equivalent of
166 a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any of
167 the following acts:

168 (i) exposure of a person's genitals, the buttocks, the anus, the pubic area, or the female
169 breast below the top of the areola;

170 (ii) masturbation;

171 (iii) touching of a person's genitals, the buttocks, the anus, the pubic area, or the female
172 breast; or

173 (iv) any act of lewdness.

174 (2) An intent to engage in sexual activity for a fee may be inferred from a person's
175 engaging in, offering or agreeing to engage in, or requesting or directing another to engage in
176 any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.

177 (3) (a) Sexual solicitation is a class B misdemeanor, except under Subsection (3)(b).

178 (b) Any person who is convicted a second or subsequent time under this section or
179 under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of a class A
180 misdemeanor, except as provided in Section 76-10-1309.

181 (4) If a person commits an act of sexual solicitation and the person solicited is a child,
182 the offense is a third degree felony if the solicitation does not amount to human trafficking or
183 human smuggling, a violation of Section 76-5-308, or aggravated human trafficking or
184 aggravated human smuggling, a violation of Section 76-5-310.