

HUMAN TRAFFICKING REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill clarifies that children who are engaged in commercial sex should be treated as victims.

Highlighted Provisions:

This bill:

- ▶ provides that children engaged in commercial sex or sexual solicitation should be treated as victims;
- ▶ requires law enforcement officers who encounter a child engaged in commercial sex or sexual solicitation to conduct an investigation into whether the child is being trafficked;
- ▶ incorporates human trafficking of a child into the racketeering statute; and
- ▶ creates a pathway for human trafficking victims to have adjudications for crimes committed while being trafficked vacated.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-4-401, as last amended by Laws of Utah 2018, Chapter 394



28 76-10-1302, as last amended by Laws of Utah 2017, Chapter 433

29 76-10-1313, as last amended by Laws of Utah 2018, Chapter 308

30 76-10-1602, as last amended by Laws of Utah 2014, Chapter 167

31 ENACTS:

32 78A-6-1114, Utah Code Annotated 1953



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

35 Section 1. Section 76-4-401 is amended to read:

36 **76-4-401. Enticing a minor -- Elements -- Penalties.**

37 (1) As used in this section:

38 (a) "Minor" means a person who is under the age of 18.

39 (b) "Text messaging" means a communication in the form of electronic text or one or
40 more electronic images sent by the actor from a telephone, computer, or other electronic
41 communication device to another person's telephone, computer, or other electronic
42 communication device by addressing the communication to the person's telephone number or
43 other electronic communication access code or number.

44 (2) (a) A person commits enticement of a minor when the person knowingly uses the
45 Internet or text messaging to solicit, seduce, lure, or entice a minor, or to attempt to solicit,
46 seduce, lure, or entice a minor, or another person that the actor believes to be a minor, to
47 engage in any sexual activity which is a violation of state criminal law.

48 (b) A person commits enticement of a minor when the person knowingly uses the
49 Internet or text messaging to:

50 (i) initiate contact with a minor or a person the actor believes to be a minor; and

51 (ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written
52 means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the
53 minor or a person the actor believes to be the minor to engage in any sexual activity which is a
54 violation of state criminal law.

55 (3) It is not a defense to the crime of enticing a minor under Subsection (2), or an
56 attempt to commit this offense, that a law enforcement officer or an undercover operative who
57 is employed by a law enforcement agency was involved in the detection or investigation of the
58 offense.

59 (4) Enticement of a minor under Subsection (2)(a) or (b) is punishable as follows:

60 (a) enticement to engage in sexual activity which would be a first degree felony for the
61 actor is a:

62 (i) second degree felony upon the first conviction for violation of this Subsection

63 (4)(a); and

64 (ii) first degree felony punishable by imprisonment for an indeterminate term of not
65 fewer than three years and which may be for life, upon a second or any subsequent conviction
66 for a violation of this Subsection (4)(a);

67 (b) enticement to engage in sexual activity which would be a second degree felony for
68 the actor is a third degree felony;

69 (c) enticement to engage in sexual activity which would be a third degree felony for the
70 actor is a class A misdemeanor;

71 (d) enticement to engage in sexual activity which would be a class A misdemeanor for
72 the actor is a class B misdemeanor; and

73 (e) enticement to engage in sexual activity which would be a class B misdemeanor for
74 the actor is a class C misdemeanor.

75 (5) (a) When a person who commits a felony violation of this section has been
76 previously convicted of an offense under Subsection (5)(b), the court may not in any way
77 shorten the prison sentence, and the court may not:

78 (i) grant probation;

79 (ii) suspend the execution or imposition of the sentence;

80 (iii) enter a judgment for a lower category of offense; or

81 (iv) order hospitalization.

82 (b) The sections referred to in Subsection (5)(a) are:

83 (i) Section 76-4-401, enticing a minor;

84 (ii) Section 76-5-301.1, child kidnapping;

85 (iii) Section 76-5-402, rape;

86 (iv) Section 76-5-402.1, rape of a child;

87 (v) Section 76-5-402.2, object rape;

88 (vi) Section 76-5-402.3, object rape of a child;

89 (vii) Subsection 76-5-403(2), forcible sodomy;

- 90 (viii) Section [76-5-403.1](#), sodomy on a child;
- 91 (ix) Section [76-5-404](#), forcible sexual abuse;
- 92 (x) Section [76-5-404.1](#), sexual abuse of a child and aggravated sexual abuse of a child;
- 93 (xi) Section [76-5-405](#), aggravated sexual assault;
- 94 (xii) Section [76-5-308.5](#), human trafficking of a child;
- 95 [~~(xii)~~] (xiii) any offense in any other state or federal jurisdiction which constitutes or
- 96 would constitute a crime in Subsections (5)(b)(i) through [~~(xi)~~] (xii); or
- 97 [~~(xiii)~~] (xiv) the attempt, solicitation, or conspiracy to commit any of the offenses in
- 98 Subsections (5)(b)(i) through [~~(xii)~~] (xiii).

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

100 **76-10-1302. Prostitution.**

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

102 (a) engages, offers, or agrees to engage in any sexual activity with another individual

103 for a fee, or the functional equivalent of a fee;

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

105 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee

106 or the functional equivalent of a fee; or

107 (c) loiters in or within view of any public place for the purpose of being hired to

108 engage in sexual activity.

109 (2) (a) Except as provided in Subsection (2)(b) or Section [76-10-1309](#), prostitution is a

110 class B misdemeanor.

111 (b) Except as provided in Section [76-10-1309](#), an individual who is convicted a second

112 time, and on all subsequent convictions, of a subsequent offense of prostitution under this

113 section or under a local ordinance adopted in compliance with Section [76-10-1307](#), is guilty of

114 a class A misdemeanor.

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

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

117 (ii) "Child engaged in [~~prostitution~~] commercial sex" means a child who engages in

118 conduct described in Subsection (1).

119 (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to

120 commit or engage in any sexual activity with another person for a fee or the functional

121 equivalent of a fee under Subsection [76-10-1313](#)(1)(a) or (c).

122 (iv) "Division" means the Division of Child and Family Services created in Section
123 [62A-4a-103](#).

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

125 (b) Upon encountering a child engaged in [~~prostitution~~] commercial sex or sexual
126 solicitation, a law enforcement officer shall:

127 (i) conduct an investigation regarding possible human trafficking of the child pursuant
128 to Sections [76-5-308](#) and [76-5-308.5](#);

129 (ii) refer the child to the division;

130 (iii) [~~if an arrest is made,~~] bring the child to a receiving center, if available; and

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

132 (c) When law enforcement [~~has referred the~~] refers a child to the division under
133 Subsection (3)(b)(ii)[~~:(i)~~] the division shall provide services to the child under Title 62A,
134 Chapter 4a, Child and Family Services[~~; and~~].

135 [~~(i)~~] (4) [~~the~~] A child may not be subjected to delinquency proceedings under Title
136 62A, Chapter 7, Juvenile Justice Services, and Section [78A-6-601](#) through Section [78A-6-704](#).

137 Section 3. Section **76-10-1313** is amended to read:

138 **76-10-1313. Sexual solicitation -- Penalty.**

139 (1) An individual is guilty of sexual solicitation when the individual:

140 (a) offers or agrees to commit any sexual activity with another individual for a fee, or
141 the functional equivalent of a fee;

142 (b) pays or offers or agrees to pay a fee or the functional equivalent of a fee to another
143 individual to commit any sexual activity; or

144 (c) with intent to engage in sexual activity for a fee or the functional equivalent of a fee
145 or to pay another individual to commit any sexual activity for a fee or the functional equivalent
146 of a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any
147 of the following acts:

148 (i) exposure of an individual's genitals, the buttocks, the anus, the pubic area, or the
149 female breast below the top of the areola;

150 (ii) masturbation;

151 (iii) touching of an individual's genitals, the buttocks, the anus, the pubic area, or the

152 female breast; or

153 (iv) any act of lewdness.

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

157 (3) (a) Sexual solicitation is a class A misdemeanor, except under Subsection (4).

158 (b) An individual who is convicted a second time under this section or under a local
159 ordinance adopted in compliance with Section 76-10-1307 is guilty of a class A misdemeanor,
160 except as provided in Section 76-10-1309.

161 (4) An individual who is convicted a third time under this section or a local ordinance
162 adopted in compliance with Section 76-10-1307 is guilty of a third degree felony.

163 (5) If an individual commits an act of sexual solicitation and the individual solicited is
164 a child, the offense is a third degree felony if the solicitation does not amount to:

165 (a) a violation of Section 76-5-308, human trafficking or human smuggling[~~;~~ a
166 violation of Section 76-5-308]; or

167 (b) a violation of Section 76-5-310, aggravated human trafficking or aggravated human
168 smuggling[~~;~~ a violation of Section 76-5-310].

169 (6) Upon encountering a child engaged in commercial sex or sexual solicitation, a law
170 enforcement officer shall follow the procedure described in Subsection 76-10-1302(3)(b). A
171 child engaged in commercial sex or sexual solicitation shall be referred to the Division of Child
172 and Family Services for services and may not be subjected to delinquency proceedings.

173 Section 4. Section 76-10-1602 is amended to read:

174 **76-10-1602. Definitions.**

175 As used in this part:

176 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
177 business trust, association, or other legal entity, and any union or group of individuals
178 associated in fact although not a legal entity, and includes illicit as well as licit entities.

179 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
180 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
181 have the same or similar purposes, results, participants, victims, or methods of commission, or
182 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall

183 demonstrate continuing unlawful conduct and be related either to each other or to the
184 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
185 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
186 activity as defined by this part shall have occurred within five years of the commission of the
187 next preceding act alleged as part of the pattern.

188 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
189 interest in property, including state, county, and local governmental entities.

190 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
191 command, encourage, or intentionally aid another person to engage in conduct which would
192 constitute any offense described by the following crimes or categories of crimes, or to attempt
193 or conspire to engage in an act which would constitute any of those offenses, regardless of
194 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
195 or a felony:

196 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
197 Recording Practices Act;

198 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
199 Code, Sections [19-1-101](#) through [19-7-109](#);

200 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
201 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
202 Code of Utah, or Section [23-20-4](#);

203 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
204 26, Chapter 20, Utah False Claims Act, Sections [26-20-1](#) through [26-20-12](#);

205 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
206 Offenses and Procedure Act;

207 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
208 Land Sales Practices Act;

209 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
210 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
211 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
212 Clandestine Drug Lab Act;

213 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform

- 214 Securities Act;
- 215 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah
- 216 Procurement Code;
- 217 (j) assault or aggravated assault, Sections [76-5-102](#) and [76-5-103](#);
- 218 (k) a threat of terrorism, Section [76-5-107.3](#);
- 219 (l) criminal homicide, Sections [76-5-201](#), [76-5-202](#), and [76-5-203](#);
- 220 (m) kidnapping or aggravated kidnapping, Sections [76-5-301](#) and [76-5-302](#);
- 221 (n) human trafficking, human trafficking of a child, human smuggling, or aggravated
- 222 human trafficking, Sections [76-5-308](#), [76-5-308.5](#), [76-5-309](#), and [76-5-310](#);
- 223 (o) sexual exploitation of a minor, Section [76-5b-201](#);
- 224 (p) arson or aggravated arson, Sections [76-6-102](#) and [76-6-103](#);
- 225 (q) causing a catastrophe, Section [76-6-105](#);
- 226 (r) burglary or aggravated burglary, Sections [76-6-202](#) and [76-6-203](#);
- 227 (s) burglary of a vehicle, Section [76-6-204](#);
- 228 (t) manufacture or possession of an instrument for burglary or theft, Section [76-6-205](#);
- 229 (u) robbery or aggravated robbery, Sections [76-6-301](#) and [76-6-302](#);
- 230 (v) theft, Section [76-6-404](#);
- 231 (w) theft by deception, Section [76-6-405](#);
- 232 (x) theft by extortion, Section [76-6-406](#);
- 233 (y) receiving stolen property, Section [76-6-408](#);
- 234 (z) theft of services, Section [76-6-409](#);
- 235 (aa) forgery, Section [76-6-501](#);
- 236 (bb) fraudulent use of a credit card, Sections [76-6-506.2](#), [76-6-506.3](#), [76-6-506.5](#), and
- 237 [76-6-506.6](#);
- 238 (cc) deceptive business practices, Section [76-6-507](#);
- 239 (dd) bribery or receiving bribe by person in the business of selection, appraisal, or
- 240 criticism of goods, Section [76-6-508](#);
- 241 (ee) bribery of a labor official, Section [76-6-509](#);
- 242 (ff) defrauding creditors, Section [76-6-511](#);
- 243 (gg) acceptance of deposit by insolvent financial institution, Section [76-6-512](#);
- 244 (hh) unlawful dealing with property by fiduciary, Section [76-6-513](#);

- 245 (ii) bribery or threat to influence contest, Section 76-6-514;
- 246 (jj) making a false credit report, Section 76-6-517;
- 247 (kk) criminal simulation, Section 76-6-518;
- 248 (ll) criminal usury, Section 76-6-520;
- 249 (mm) fraudulent insurance act, Section 76-6-521;
- 250 (nn) retail theft, Section 76-6-602;
- 251 (oo) computer crimes, Section 76-6-703;
- 252 (pp) identity fraud, Section 76-6-1102;
- 253 (qq) mortgage fraud, Section 76-6-1203;
- 254 (rr) sale of a child, Section 76-7-203;
- 255 (ss) bribery to influence official or political actions, Section 76-8-103;
- 256 (tt) threats to influence official or political action, Section 76-8-104;
- 257 (uu) receiving bribe or bribery by public servant, Section 76-8-105;
- 258 (vv) receiving bribe or bribery for endorsement of person as public servant, Section
- 259 76-8-106;
- 260 (ww) official misconduct, Sections 76-8-201 and 76-8-202;
- 261 (xx) obstruction of justice, Section 76-8-306;
- 262 (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 263 (zz) false or inconsistent material statements, Section 76-8-502;
- 264 (aaa) false or inconsistent statements, Section 76-8-503;
- 265 (bbb) written false statements, Section 76-8-504;
- 266 (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 267 (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 268 (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 269 (fff) tampering with evidence, Section 76-8-510.5;
- 270 (ggg) falsification or alteration of government record, Section 76-8-511, if the record is
- 271 a record described in Title 20A, Election Code, or Title 36, Chapter 11, Lobbyist Disclosure
- 272 and Regulation Act;
- 273 (hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 274 76-8-1205;
- 275 (iii) unemployment insurance fraud, Section 76-8-1301;

276 (jjj) intentionally or knowingly causing one animal to fight with another, Subsection
277 76-9-301(2)(d) or (e), or Section 76-9-301.1;

278 (kkk) possession, use, or removal of explosives, chemical, or incendiary devices or
279 parts, Section 76-10-306;

280 (lll) delivery to common carrier, mailing, or placement on premises of an incendiary
281 device, Section 76-10-307;

282 (mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;

283 (nnn) unlawful marking of pistol or revolver, Section 76-10-521;

284 (ooo) alteration of number or mark on pistol or revolver, Section 76-10-522;

285 (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section
286 76-10-1002;

287 (qqq) selling goods under counterfeited trademark, trade name, or trade devices,
288 Section 76-10-1003;

289 (rrr) sales in containers bearing registered trademark of substituted articles, Section
290 76-10-1004;

291 (sss) selling or dealing with article bearing registered trademark or service mark with
292 intent to defraud, Section 76-10-1006;

293 (ttt) gambling, Section 76-10-1102;

294 (uuu) gambling fraud, Section 76-10-1103;

295 (vvv) gambling promotion, Section 76-10-1104;

296 (www) possessing a gambling device or record, Section 76-10-1105;

297 (xxx) confidence game, Section 76-10-1109;

298 (yyy) distributing pornographic material, Section 76-10-1204;

299 (zzz) inducing acceptance of pornographic material, Section 76-10-1205;

300 (aaaa) dealing in harmful material to a minor, Section 76-10-1206;

301 (bbbb) distribution of pornographic films, Section 76-10-1222;

302 (cccc) indecent public displays, Section 76-10-1228;

303 (dddd) prostitution, Section 76-10-1302;

304 (eeee) aiding prostitution, Section 76-10-1304;

305 (ffff) exploiting prostitution, Section 76-10-1305;

306 (gggg) aggravated exploitation of prostitution, Section 76-10-1306;

307 (hhhh) communications fraud, Section [76-10-1801](#);
308 (iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and
309 Currency Transaction Reporting Act;
310 (jjjj) vehicle compartment for contraband, Section [76-10-2801](#);
311 (kkkk) any act prohibited by the criminal provisions of the laws governing taxation in
312 this state; and
313 (llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
314 Sec. 1961(1)(B), (C), and (D).

315 Section 5. Section **78A-6-1114** is enacted to read:

316 **78A-6-1114. Vacatur of convictions.**

317 (1) (a) A person who has been adjudicated under this chapter may petition the court for
318 vacatur of the person's juvenile court record and any related records in the custody of the state
319 agency if:

320 (i) the petitioner was adjudicated under Section [76-10-1302](#), prostitution, Section
321 [76-10-1304](#), aiding prostitution, or Section [76-10-1313](#) sex solicitation; or

322 (ii) the adjudication was based on conduct the petitioner engaged in while subject to
323 force, fraud, or coercion, as defined in Section [76-5-308](#).

324 (b) The petitioner shall include in the petition any agencies known or alleged to have
325 any documents related to the offense for which vacatur is being sought.

326 (c) The petitioner shall include with the petition the original criminal history report
327 obtained from the Bureau of Criminal Identification in accordance with the provisions of
328 Section [53-10-108](#).

329 (d) The petitioner shall send a copy of the petition to the county attorney or, if within a
330 prosecution district, the district attorney.

331 (e) (i) Upon the filing of a petition, the court shall:

332 (A) set a date for a hearing;

333 (B) notify the county attorney or district attorney and the agency with custody of the
334 records at least 30 days prior to the hearing of the pendency of the petition; and

335 (C) notify the county attorney or district attorney and the agency with records the
336 petitioner is asking the court to vacate of the date of the hearing.

337 (ii) The court shall provide a victim with the opportunity to request notice of a petition

338 for vacatur. A victim shall receive notice of a petition for vacatur at least 30 days prior to the
339 hearing if, prior to the entry of a vacatur order, the victim or, in the case of a child or a person
340 who is incapacitated or deceased, the victim's next of kin or authorized representative, submits
341 a written and signed request for notice to the court in the judicial district in which the crime
342 occurred or judgment was entered. The notice shall include a copy of the petition and statutes
343 and rules applicable to the petition.

344 (2) (a) At the hearing the petitioner, the county attorney or district attorney, a victim,
345 and any other person who may have relevant information about the petitioner may testify.

346 (b) (i) In deciding whether to grant a petition for vacatur, the court shall consider
347 whether the petitioner acted subject to force, fraud, or coercion, as defined in Section [76-5-308](#),
348 at the time of the conduct giving rise to the adjudication.

349 (ii) If the court finds by a preponderance of the evidence that the petitioner was subject
350 to force, fraud, or coercion, as defined in Section [76-5-308](#) at the time of the conduct giving
351 rise to the adjudication, the court shall grant vacatur. If the court does not find sufficient
352 evidence, the court shall deny vacatur.

353 (iii) If the petition is for vacatur of any adjudication under Section [76-10-1302](#),
354 prostitution, Section [76-10-1304](#), aiding prostitution, or Section [76-10-1313](#) sex solicitation,
355 the court shall presumptively grant vacatur unless the petitioner acted as a purchaser of any
356 sexual activity.

357 (c) If vacatur is granted, the court shall order sealed all of the petitioner's records under
358 the control of the juvenile court and any of the petitioner's records under the control of any
359 other agency or official pertaining to the petitioner's adjudicated juvenile court cases, including
360 relevant related records contained in the Management Information System created by Section
361 [62A-4a-1003](#) and the Licensing Information System created by Section [62A-4a-1005](#).

362 (3) The petitioner shall be responsible for service of the order of vacatur to all affected
363 state, county, and local entities, agencies, and officials. To avoid destruction or sealing of the
364 records in whole or in part, the agency or entity receiving the vacatur order shall only vacate all
365 references to the petitioner's name in the records pertaining to the petitioner's adjudicated
366 juvenile court cases.

367 (4) Upon the entry of the order, the proceedings in the petitioner's case shall be
368 considered never to have occurred and the petitioner may properly reply accordingly upon any

369 inquiry in the matter. Inspection of the records may thereafter only be permitted by the court
370 upon petition by the person who is the subject of the records, and only to persons named in the
371 petition.

372 (5) The court may not vacate a juvenile court record if the record contains an
373 adjudication of:

374 (a) Section [76-5-202](#), aggravated murder; or

375 (b) Section [76-5-203](#), murder.