

1 **SEXUAL SOLICITATION AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Susan Pulsipher**

5 Senate Sponsor: Wayne A. Harper

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the elements and penalties for sexual solicitation and related
10 offenses.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ deletes and modifies definitions;
- 14 ▶ modifies the elements of the offense of prostitution;
- 15 ▶ adjusts the elements and penalties for the offense of patronizing a prostitute;
- 16 ▶ adjusts the elements and penalties for the offense of sexual solicitation; and
- 17 ▶ makes technical and conforming changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill provides a coordination clause.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **76-10-1301**, as last amended by Laws of Utah 2018, Chapter 308

25 **76-10-1302**, as last amended by Laws of Utah 2020, Chapters 108, 214 and last
26 amended by Coordination Clause, Laws of Utah 2020, Chapter 214

27 **76-10-1303**, as last amended by Laws of Utah 2018, Chapter 308

28 **76-10-1313**, as last amended by Laws of Utah 2020, Chapter 108

29 **76-10-1315**, as last amended by Laws of Utah 2021, Chapter 262

30 Utah Code Sections Affected by Coordination Clause:

31 76-10-1313, as last amended by Laws of Utah 2020, Chapter 108



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 As used in this part:

37 (1) "Child" is an individual younger than 18 years ~~[of age]~~ old.

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

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

43 ~~[(4)]~~ (3) "Prostitute" or "prostituted individual" means an individual engaged in ~~[the~~
44 ~~activities]~~ an activity described in Subsection 76-10-1302(1) or 76-10-1313(1)(a), (c), (d), or
45 (f).

46 ~~[(5)]~~ (4) "Public place" means ~~[any]~~ a place to which the public or any substantial
47 group of the public has access.

48 ~~[(6)]~~ (5) "Sexual activity" means, regardless of the gender of either participant:

49 (a) ~~[acts]~~ an act of masturbation, sexual intercourse, or any sexual act involving the
50 genitals of one individual and the mouth or anus of another individual; or

51 (b) ~~[touching]~~ the touching of the genitals, female breast, or anus of one individual
52 with any other body part of another individual with the intent to sexually arouse or gratify
53 either individual.

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

55 **76-10-1302. Prostitution.**

56 (1) An ~~[individual]~~ actor, except for a child under Section 76-10-1315, is guilty of
57 prostitution ~~[when the individual:]~~ if the actor engages in sexual activity with another

58 individual for a fee, or the functional equivalent of a fee.

59 ~~[(a) engages, offers, or agrees to engage in any sexual activity with another individual~~
60 ~~for a fee, or the functional equivalent of a fee;]~~

61 ~~[(b) takes steps in arranging a meeting through any form of advertising, agreeing to~~
62 ~~meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee~~
63 ~~or the functional equivalent of a fee; or]~~

64 ~~[(c) loiters in or within view of any public place for the purpose of being hired to~~
65 ~~engage in sexual activity.]~~

66 (2) (a) Except as provided in Subsection (2)(b) and Section 76-10-1309, [prostitution]
67 a violation of Subsection (1) is a class B misdemeanor.

68 (b) Except as provided in Section 76-10-1309, an [individual] actor who is convicted a
69 second time, and on all subsequent convictions, of a subsequent offense of prostitution under
70 this section or under a local ordinance adopted [~~in compliance with~~] under Section 76-10-1307,
71 is guilty of a class A misdemeanor.

72 (3) A prosecutor may not prosecute an [individual] actor for a violation of Subsection
73 (1) if the [individual] actor engages in a violation of Subsection (1) at or near the time the
74 [individual] actor witnesses or is a victim of any of the following offenses, or an attempt to
75 commit any of the following offenses, and the [individual] actor reports the offense or attempt
76 to law enforcement in good faith:

77 (a) assault, Section 76-5-102;

78 (b) aggravated assault, Section 76-5-103;

79 (c) mayhem, Section 76-5-105;

80 (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse
81 homicide, or homicide by assault under Title 76, Chapter 5, Part 2, Criminal Homicide;

82 (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or
83 aggravated human trafficking, human smuggling or aggravated human smuggling, or human
84 trafficking of a child under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and
85 Smuggling;

- 86 (f) rape, Section 76-5-402;
- 87 (g) rape of a child, Section 76-5-402.1;
- 88 (h) object rape, Section 76-5-402.2;
- 89 (i) object rape of a child, Section 76-5-402.3;
- 90 (j) forcible sodomy, Section 76-5-403;
- 91 (k) sodomy on a child, Section 76-5-403.1;
- 92 (l) forcible sexual abuse, Section 76-5-404;
- 93 (m) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
- 94 (n) aggravated sexual assault, Section 76-5-405;
- 95 (o) sexual exploitation of a minor, Section 76-5b-201;
- 96 (p) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- 97 (q) aggravated burglary or burglary of a dwelling under Title 76, Chapter 6, Part 2,
- 98 Burglary and Criminal Trespass;
- 99 (r) aggravated robbery or robbery under Title 76, Chapter 6, Part 3, Robbery; or
- 100 (s) theft by extortion under Subsection 76-6-406(2)(a) or (b).

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

76-10-1303. Patronizing a prostitute.

(1) An [~~individual~~] actor is guilty of patronizing a prostitute [~~when the individual~~] if the actor:

(a) pays or offers or agrees to pay a [~~prostitute~~] prostituted individual, or an individual the actor believes to be a [~~prostitute~~] prostituted individual, a fee, or the functional equivalent of a fee, for the purpose of engaging in an act of sexual activity; or

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

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

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

114 misdemeanor.

115 (4) A third violation of this section or a local ordinance adopted under Section
 116 76-10-1307 is a third degree felony.

117 (5) [~~H~~] (a) Except as provided in Subsection (5)(d), if the patronizing of a prostitute
 118 under Subsection (1)(a) involves a child as the other individual, a violation of Subsection (1)(a)
 119 is a [~~third~~] second degree felony.

120 (b) In accordance with Subsection 76-2-304.5(5)(a), it is not a defense to a prosecution
 121 under Subsection (5)(a) that the actor mistakenly believed the individual to be 18 years old or
 122 older at the time of the offense or was unaware of the individual's true age.

123 (c) An actor's belief that the individual was under 18 years old at the time of the
 124 offense, even if the individual was 18 years old or older, is a violation of Subsection (5)(a).

125 (d) If the act committed under Subsection (5)(a) amounts to an offense that is subject to
 126 a greater penalty under another provision of state law than is provided under Subsection (5)(a),
 127 this Subsection (5) does not prohibit prosecution and sentencing for the more serious offense.

128 (6) Upon a conviction for a violation of this section, the court shall order:

129 (a) the maximum fine amount and may not waive or suspend the fine[-]; and

130 (b) the defendant to pay for and complete a court-approved educational program about
 131 the negative effects on an individual involved with prostitution or human trafficking.

132 Section 4. Section **76-10-1313** is amended to read:

133 **76-10-1313. Sexual solicitation -- Penalty.**

134 (1) An individual except for a child under Section 76-10-1315 is guilty of sexual
 135 solicitation [~~when~~] if the individual:

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

138 (b) pays or offers or agrees to pay a fee or the functional equivalent of a fee to another
 139 individual to commit any sexual activity; [~~or~~]

140 (c) takes steps to arrange a meeting through any form of advertising or agreement to
 141 meet, and meets at an arranged place for the purpose of being hired to engage in sexual activity

142 in exchange for a fee or the functional equivalent of a fee;

143 (d) loiters in or within view of a public place for the purpose of being hired to engage
144 in sexual activity in exchange for a fee, or the functional equivalent of a fee;

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

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

151 (ii) masturbation;

152 (iii) touching of an individual's genitals, the buttocks, the anus, the pubic area, or the
153 female breast; or

154 (iv) any act of lewdness~~[-];~~ or

155 (f) with intent to engage in sexual activity for a fee, or the functional equivalent of a
156 fee, engages in or offers or agrees to engage in an act described in Subsection (1)(e)(i) through
157 (iv).

158 (2) An intent to engage in sexual activity for a fee may be inferred from an individual's
159 engaging in, offering or agreeing to engage in, or requesting or directing another to engage in
160 any of the acts described in Subsection (1)~~[(e)] (e) or (f)~~ under the totality of the existing
161 circumstances.

162 (3) Except as provided in Section 76-10-1309 and Subsections (4) and (5), ~~[an~~
163 ~~individual who is convicted of sexual solicitation under this section]~~ a violation of Subsection
164 (1)(a), (c), (d), or (f) or under a local ordinance adopted in compliance with Section
165 76-10-1307 is [guilty of a class A misdemeanor.];

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

168 (a) a class B misdemeanor on a first or second violation; and

169 (b) a class A misdemeanor on a third or subsequent violation.

170 (4) Except as provided in Section 76-10-1309 and Subsections (5) and (8), a violation
171 of Subsection (1)(b) or (e) or a local ordinance adopted under Section 76-10-1307 is:

172 (a) a class A misdemeanor on the first or second violation; and

173 (b) a third degree felony on a third or subsequent violation.

174 (5) If an individual commits an act of sexual solicitation in violation of Subsection (1)
175 and the individual solicited is a child, the offense is a [~~third~~] second degree felony if the
176 solicitation does not amount to a violation of:

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

178 (b) Section 76-5-308.5, human trafficking of a child; or

179 [~~(b)~~] (c) [~~a violation of~~] Section 76-5-310, aggravated human trafficking or aggravated
180 human smuggling.

181 (6) (a) Upon encountering a child engaged in commercial sex or sexual solicitation, a
182 law enforcement officer shall follow the procedure described in Subsection 76-10-1315(2).

183 (b) A child engaged in commercial sex or sexual solicitation shall be referred to the
184 Division of Child and Family Services for services and may not be subjected to delinquency
185 proceedings.

186 (7) A prosecutor may not prosecute an individual for a violation of Subsection (1) if
187 the individual engages in a violation of Subsection (1) at or near the time the individual
188 witnesses or is a victim of any of the offenses or an attempt to commit any of the offenses
189 described in Subsection 76-10-1302(3), and the individual reports the offense or attempt to law
190 enforcement in good faith.

191 (8) (a) As part of a sentence imposed under Subsection (3), the court may lower, waive,
192 or suspend a fine if the defendant completes a court-approved program that provides
193 information or services intended to help an individual no longer engage in prostitution.

194 (b) As part of a sentence imposed under Subsection (4), the court shall order the
195 defendant to pay for and complete a court-approved educational program about the negative
196 effects on an individual involved with prostitution or human trafficking.

197 Section 5. Section 76-10-1315 is amended to read:

198 **76-10-1315. Safe harbor for children as victims in commercial sex or sexual**
199 **solicitation.**

200 (1) As used in this section:

201 (a) "Child engaged in commercial sex" means a child who:

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

204 (ii) takes steps in arranging a meeting through any form of advertising, agreeing to
205 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee
206 or the functional equivalent of a fee; or

207 (iii) loiters in or within view of any public place for the purpose of being hired to
208 engage in sexual activity.

209 (b) "Child engaged in sexual solicitation" means a child who offers or agrees to
210 commit or engage in any sexual activity with another person for a fee, or the functional
211 equivalent of a fee, under Subsection 76-10-1313(1)(a) [~~or~~], (c), (d), or (f).

212 (c) "Division" means the Division of Child and Family Services created in Section
213 62A-4a-103.

214 (d) "Juvenile receiving center" means the same as that term is defined in Section
215 80-1-102.

216 (2) Upon encountering a child engaged in commercial sex or sexual solicitation, a law
217 enforcement officer shall:

218 (a) conduct an investigation regarding possible human trafficking of the child pursuant
219 to Sections 76-5-308 and 76-5-308.5;

220 (b) refer the child to the division;

221 (c) bring the child to a juvenile receiving center, if available; and

222 (d) contact the child's parent or guardian, if practicable.

223 (3) When law enforcement refers a child to the division under Subsection (2)(b) the
224 division shall provide services to the child under Title 62A, Chapter 4a, Child and Family
225 Services.

226 (4) A child may not be subjected to delinquency proceedings for prostitution under
227 Section 76-10-1302, or ~~[sex]~~ sexual solicitation under Section 76-10-1313.

228 Section 6. **Coordinating H.B. 81 with S.B. 123 -- Technical amendment.**

229 If this H.B. 81 and S.B. 123, Criminal Code Recodification, both pass and become law,
230 it is the intent of the Legislature that the Office of Legislative Research and General Counsel
231 prepare the Utah Code database for publication by amending Subsection 76-10-1313(5) to read:

232 "(5) If an individual commits an act of sexual solicitation in violation of Subsection (1)
233 and the individual solicited is a child, the offense is a ~~[third]~~ second degree felony if the
234 solicitation does not amount to a violation of:

235 (a) ~~[a violation of]~~ Section 76-5-308, 76-5-308.1, or 76-5-308.5, human trafficking or
236 Section 76-5-308.3, human smuggling; or

237 (b) ~~[a violation of]~~ Section 76-5-310, aggravated human trafficking or Section
238 76-5-310.1, aggravated human smuggling."