

# HB0081S01 compared with HB0081

~~deleted text~~ shows text that was in HB0081 but was deleted in HB0081S01.

inserted text shows text that was not in HB0081 but was inserted into HB0081S01.

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Representative Susan Pulsipher proposes the following substitute bill:

## SEXUAL SOLICITATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Susan Pulsipher**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

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

#### Highlighted Provisions:

This bill:

- ▶ deletes and modifies definitions;
- ▶ modifies the elements of the offense of prostitution;
- ▶ adjusts the elements and penalties for the offense of patronizing a prostitute;
- ▶ amends the enhanced penalties for HIV positive offenders for the offenses of prostitution, patronizing a prostitute, and sexual solicitation;
- ▶ adjusts the elements and penalties for the offense of sexual solicitation; and
- ▶ makes technical and conforming changes.

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### 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 2018, Chapter 308

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

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

**76-10-1309**, as last amended by Laws of Utah 2011, Chapter 70

**76-10-1312**, as last amended by Laws of Utah 2011, Chapter 70

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

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

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

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

#### **76-10-1301. Definitions.**

As used in this part:

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

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

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

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

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

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

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

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

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

### **76-10-1302. Prostitution.**

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

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

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

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

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

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

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

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

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

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

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

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

(f) rape, Section 76-5-402;

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

(h) object rape, Section 76-5-402.2;

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

(j) forcible sodomy, Section 76-5-403;

(k) sodomy on a child, Section 76-5-403.1;

(l) forcible sexual abuse, Section 76-5-404;

(m) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;

(n) aggravated sexual assault, Section 76-5-405;

(o) sexual exploitation of a minor, Section 76-5b-201;

(p) sexual exploitation of a vulnerable adult, Section 76-5b-202;

(q) aggravated burglary or burglary of a dwelling under Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;

(r) aggravated robbery or robbery under Title 76, Chapter 6, Part 3, Robbery; or

(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~~] third degree felony, except as

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provided in Subsection (3), (4), or (5) and 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 misdemeanor~~] third degree felony.

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

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

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

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

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

(6) [~~Upon~~] (a) Except as provided in Subsection (6)(b), upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

(b) The court may lower ~~f, waive, or suspend~~ the fine described in Subsection (6)(a) to a minimum of \$300 if the defendant pays for and completes a court-approved educational program about the negative effects on individuals involved with prostitution or human trafficking.

Section 4. Section **76-10-1309** is amended to read:

### **76-10-1309. Enhanced penalties -- HIV positive offender.**

[~~A person~~] (1) An actor who is convicted of prostitution under Section 76-10-1302[; ~~patronizing a prostitute under Section 76-10-1303,~~] or sexual solicitation under [~~Section~~] Subsection 76-10-1313(1)(a), (c), (d), or (f) is guilty of a third degree felony if at the time of the offense the [~~person~~] actor is an HIV positive individual, and the [~~person~~] actor:

[~~(1)~~] (a) has actual knowledge of the fact; or

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~~[(2)]~~ (b) has previously been convicted under Section 76-10-1302~~[, 76-10-1303,]~~ or Subsection 76-10-1313(1)(a), (c), (d), or (f).

(2) An actor who is convicted of patronizing a prostitute under Section 76-10-1303 or sexual solicitation under Subsection 76-10-1313(1)(b) or (e) is guilty of a second degree felony if at the time of the offense the actor is an HIV positive individual, and the actor:

(a) has actual knowledge of the fact; or

(b) has previously been convicted under Section 76-10-1303 or Subsection 76-10-1313(1)(b) or (e).

Section 5. Section **76-10-1312** is amended to read:

### **76-10-1312. Notice to offender of HIV positive test results.**

(1) ~~[A person]~~ An offender convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested positive for the HIV infection shall be notified of the test results in person by:

(a) the local law enforcement agency;

(b) the Department of Corrections, for offenders confined in any state prison;

(c) the state Department of Health; or

(d) an authorized representative of any of the agencies listed in this Subsection (1).

(2) The notice under Subsection (1) shall contain:

(a) the signature of the HIV positive [person] offender, indicating the [person's] offender's receipt of the notice[;];

(b) the name and signature of the person providing the notice[; and];

~~[(a)]~~ (c) the date of the test;

~~[(b)]~~ (d) the positive test results;

~~[(c)]~~ (e) the name of the HIV positive [individual] offender; and

~~[(d)]~~ (f) the following language:

"[A person] An individual who has been convicted of prostitution under Section 76-10-1302, patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 after being tested and diagnosed as an HIV positive individual and either had actual knowledge that the [person] individual is an HIV positive individual or the [person] individual has previously been convicted of any of the criminal offenses listed above is guilty of a second or third degree felony under Section 76-10-1309."

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(3) Failure to provide this notice, or to provide the notice in the manner or form prescribed under this section, does not create any civil liability and does not create a defense to any prosecution under this part.

(4) Upon conviction under Section 76-10-1309, and as a condition of probation, the offender shall receive treatment and counseling for HIV infection and drug abuse as provided in Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Section 6. Section **76-10-1313** is amended to read:

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

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

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

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

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

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

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

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

(ii) masturbation;

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

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

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

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(iv).

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

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

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

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

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

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

(a) a third degree felony on the first or second violation; and

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

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

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

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

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

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

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

(7) A prosecutor may not prosecute an individual for a violation of Subsection (1) if the individual engages in a violation of Subsection (1) at or near the time the individual

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witnesses or is a victim of any of the offenses or an attempt to commit any of the offenses described in Subsection 76-10-1302(3), and the individual reports the offense or attempt to law enforcement in good faith.

(8) As part of a sentence imposed under Subsection (4), the court may lower~~f~~, waive, or suspend~~l~~ a fine to a minimum of \$300 if the defendant pays for and completes a court-approved educational program about the negative effects on individuals involved with prostitution or human trafficking.

Section 7. Section **76-10-1315** is amended to read:

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

(b) refer the child to the division;

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

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

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

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