

HUMAN TRAFFICKING AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer M. Seelig

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Criminal Code, the Code of Criminal Procedure, the Judicial Code, and the Utah Office for Victims of Crime to incorporate provisions regarding human trafficking and human smuggling, including exploiting prostitution.

Highlighted Provisions:

This bill:

- ▶ removes any statute of limitation regarding the prosecution of aggravated human trafficking, aggravated human smuggling, and aggravated exploitation of prostitution;
- ▶ provides that lack of knowledge of the age of the victim is not a defense to a charge of aggravated human trafficking or smuggling;
- ▶ provides that a defendant subject to a pretrial criminal no contact order, who then violates that order, is guilty of a third degree felony;
- ▶ defines "child" as a person younger than 18 years of age regarding human trafficking and smuggling;
- ▶ defines "commercial purpose" regarding human trafficking and smuggling;
- ▶ provides that recruiting, harboring, transporting, or obtaining a child for human trafficking for forced labor or sexual exploitation is aggravated human trafficking;
- ▶ provides that aggravated human trafficking is a first degree felony;
- ▶ provides that aggravated human smuggling, which involves a child, is a second



- 28 degree felony;
- 29 ▶ provides that aggravated sexual abuse of a child includes human trafficking or
- 30 human smuggling of a child;
- 31 ▶ provides that the offense of patronizing a prostitute is a third degree felony if the
- 32 offense involves a child;
- 33 ▶ provides that exploitation of prostitution that involves human trafficking or human
- 34 smuggling is aggravated exploitation of prostitution and is a second degree felony;
- 35 ▶ provides that aggravated exploitation of prostitution involving a child is a first
- 36 degree felony;
- 37 ▶ provides that an act of sexual solicitation that involves solicitation of a child, but
- 38 does not amount to human trafficking or human smuggling, is a third degree felony;
- 39 ▶ provides that human trafficking or smuggling, and aggravated human trafficking
- 40 and smuggling, are offenses for which a court may authorize an order for
- 41 interception of communication;
- 42 ▶ provides that when a defendant is charged with a felony offense involving
- 43 kidnapping, human trafficking or human smuggling, sexual offenses, or aggravated
- 44 exploitation of prostitution, the court may issue a no contact order as specified; and
- 45 ▶ provides that a violation of the no contact order is a third degree felony.

46 **Money Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

- 52 **76-1-301**, as last amended by Laws of Utah 2011, Chapter 24
- 53 **76-2-304.5**, as last amended by Laws of Utah 2003, Chapter 149
- 54 **76-5-108**, as last amended by Laws of Utah 2008, Chapter 3
- 55 **76-5-307**, as enacted by Laws of Utah 2008, Chapter 343
- 56 **76-5-308**, as enacted by Laws of Utah 2008, Chapter 343
- 57 **76-5-309**, as last amended by Laws of Utah 2010, Chapter 126
- 58 **76-5-310**, as enacted by Laws of Utah 2008, Chapter 343

- 59 **76-5-404.1**, as last amended by Laws of Utah 2007, Chapter 339
- 60 **76-5-406**, as last amended by Laws of Utah 2003, Chapter 149
- 61 **76-9-1003**, as enacted by Laws of Utah 2011, Chapter 21
- 62 **76-10-1301**, as last amended by Laws of Utah 1988, Chapter 199
- 63 **76-10-1303**, as last amended by Laws of Utah 1993, Chapter 179
- 64 **76-10-1306**, as last amended by Laws of Utah 2001, Chapter 9
- 65 **76-10-1313**, as last amended by Laws of Utah 2011, Chapter 32
- 66 **77-23a-8**, as last amended by Laws of Utah 2010, Chapter 334
- 67 **77-38-3**, as last amended by Laws of Utah 2011, Chapter 131
- 68 **78B-7-113**, as last amended by Laws of Utah 2010, Chapter 324



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

71 Section 1. Section **76-1-301** is amended to read:

72 **76-1-301. Offenses for which prosecution may be commenced at any time.**

73 (1) As used in this section:

74 (a) "Aggravating offense" means any offense incident to which a homicide was
75 committed as described in Subsection 76-5-202(1)(d) or (e) or Subsection 76-5-202(2).

76 (b) "Predicate offense" means an offense described in Section 76-5-203(1) if a person
77 other than a party as defined in Section 76-2-202 was killed in the course of the commission,
78 attempted commission, or immediate flight from the commission or attempted commission of
79 the offense.

80 (2) Notwithstanding any other provisions of this code, prosecution for the following
81 offenses may be commenced at any time:

- 82 (a) capital felony;
- 83 (b) aggravated murder;
- 84 (c) murder;
- 85 (d) manslaughter;
- 86 (e) child abuse homicide;
- 87 (f) aggravated kidnapping;
- 88 (g) child kidnapping;
- 89 (h) rape;

- 90 (i) rape of a child;
- 91 (j) object rape;
- 92 (k) object rape of a child;
- 93 (l) forcible sodomy;
- 94 (m) sodomy on a child;
- 95 (n) sexual abuse of a child;
- 96 (o) aggravated sexual abuse of a child;
- 97 (p) aggravated sexual assault; [or]
- 98 (q) any predicate offense to a murder or aggravating offense to an aggravated
- 99 murder[-];
- 100 (r) aggravated human trafficking or aggravated human smuggling in violation of
- 101 Section 76-5-310; or
- 102 (s) aggravated exploitation of prostitution involving a child, under Section 76-10-1306.
- 103 Section 2. Section **76-2-304.5** is amended to read:
- 104 **76-2-304.5. Mistake as to victim's age not a defense.**
- 105 (1) It is not a defense to the crime of child [~~kidnaping~~] kidnapping, a violation of
- 106 Section 76-5-301.1; rape of a child, a violation of Section 76-5-402.1; object rape of a child, a
- 107 violation of Section 76-5-402.3; sodomy [~~upon~~] on a child, a violation of Section 76-5-403.1;
- 108 [~~or~~] sexual abuse of a child, a violation of Section 76-5-404.1; [~~or~~] aggravated sexual abuse of
- 109 a child, a violation of Subsection 76-5-404.1(4); or an attempt to commit any of [~~those~~] these
- 110 offenses, that the actor mistakenly believed the victim to be 14 years of age or older at the time
- 111 of the alleged offense or was unaware of the victim's true age.
- 112 (2) It is not a defense to the crime of unlawful sexual activity with a minor, a violation
- 113 of Section 76-5-401[-]; sexual abuse of a minor, a violation of Section 76-5-401.1[-]; or an
- 114 attempt to commit either of these offenses, that the actor mistakenly believed the victim to be
- 115 16 years of age or older at the time of the alleged offense or was unaware of the victim's true
- 116 age.
- 117 (3) It is not a defense to the crime of aggravated human trafficking or aggravated
- 118 human smuggling, a violation of Section 76-5-310, that the actor mistakenly believed the
- 119 victim to be 18 years of age or older at the time of the alleged offense or was unaware of the
- 120 victim's true age.

121 (4) It is not a defense to any of the following crimes that the actor mistakenly believed
 122 the victim to be 18 years of age or older at the time of the alleged offense or was unaware of
 123 the victim's true age:

124 (a) patronizing a prostitute, a violation of Section 76-10-1303;

125 (b) aggravated exploitation of a prostitute, a violation of Section 76-10-1306; or

126 (c) sexual solicitation, a violation of Section 76-10-1313.

127 Section 3. Section **76-5-108** is amended to read:

128 **76-5-108. Protective orders restraining abuse of another -- Violation.**

129 (1) Any person who is the respondent or defendant subject to a protective order, child
 130 protective order, ex parte protective order, or ex parte child protective order issued under Title
 131 78B, Chapter 7, Part 1, Cohabitant Abuse Act~~[, or]~~; Title 78A, Chapter 6, Juvenile Court Act
 132 ~~[of 1996]~~; Title 77, Chapter 36, Cohabitant Abuse Procedures Act~~[,]~~; or a foreign protection
 133 order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of
 134 Domestic Violence Protection Orders Act, who intentionally or knowingly violates that order
 135 after having been properly served, is guilty of a class A misdemeanor, except as a greater
 136 penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

137 (2) Violation of an order as described in Subsection (1) is a domestic violence offense
 138 under Section 77-36-1 and subject to increased penalties in accordance with Section 77-36-1.1.

139 Section 4. Section **76-5-307** is amended to read:

140 **76-5-307. Definitions.**

141 As used in Sections 76-5-308 through ~~[76-5-312]~~ 76-5-310 of this part:

142 (1) "Child" means a person younger than 18 years of age.

143 (2) "Commercial purpose" includes direct or indirect participation in or facilitation of
 144 the transportation of one or more persons for the purpose of:

145 (a) charging or obtaining a fee for the transportation; or

146 (b) obtaining, exchanging, or receiving any thing or item of value or an attempt to
 147 conduct any of these activities.

148 (3) "Facilitation" regarding transportation under Subsection (2) includes providing:

149 (a) travel arrangement services;

150 (b) payment for the costs of travel; or

151 (c) property that would advance an act of transportation, including a vehicle or other

152 means of transportation, a weapon, false identification, and making lodging available,
153 including by rent, lease, or sale.

154 ~~[(1)]~~ (4) "Family member" means a person's parent, grandparent, sibling, or any other
155 person related to the person by consanguinity or affinity to the second degree.

156 ~~[(2) "Smuggling of human beings" means the transportation or procurement of~~
157 ~~transportation for one or more persons by an actor who knows or has reason to know that the~~
158 ~~person or persons transported or to be transported are not:]~~

159 ~~[(a) citizens of the United States;]~~

160 ~~[(b) permanent resident aliens; or]~~

161 ~~[(c) otherwise lawfully in this state or entitled to be in this state.]~~

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

163 **76-5-308. Human trafficking -- Human smuggling.**

164 (1) An actor commits human trafficking for forced labor or forced sexual exploitation
165 if the actor recruits, harbors, transports, or obtains a person through the use of force, fraud, or
166 coercion by means of:

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

169 (b) destroying, concealing, removing, confiscating, or possessing any passport,
170 immigration document, or other government identification document;

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

173 (d) using a condition of a person being a debtor due to a pledge of the debtor's personal
174 services or the personal services of a person under the control of the debtor as a security for
175 debt where the reasonable value of the services is not applied toward the liquidation of the debt
176 or the length and nature of those services are not respectively limited and defined; or

177 (e) using a condition of servitude by means of any scheme, plan, or pattern intended to
178 cause a person to believe that if the person did not enter into or continue in a condition of
179 servitude, that person or a third person would suffer serious harm or physical restraint, or
180 would be threatened with abuse of legal process.

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

183 (b) Human trafficking for forced sexual exploitation includes all forms of forced
184 commercial sexual activity, including forced sexually explicit performance, forced prostitution,
185 forced participation in the production of pornography, forced performance in strip clubs, and
186 forced exotic dancing or display.

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

190 (a) citizens of the United States;

191 (b) permanent resident aliens; or

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

193 Section 6. Section **76-5-309** is amended to read:

194 **76-5-309. Human trafficking and human smuggling -- Penalties.**

195 (1) Human trafficking for forced labor and human trafficking for forced sexual
196 exploitation are each a second degree felony, except under Section 76-5-310.

197 (2) Human smuggling, under Section 76-5-308 of one or more [~~human beings for profit~~
198 ~~or for a commercial purpose~~] persons is a third degree felony, except under Section 76-5-310.

199 (3) Human trafficking for forced labor or for forced sexual exploitation and human
200 smuggling are each a separate offense from any other crime committed in relationship to the
201 commission of either of these offenses.

202 (4) [~~A~~] Under circumstances not amounting to aggravated sexual abuse of a child, a
203 violation of Subsection 76-5-404.1(4)(h)(i), a person who benefits [~~financially or materially by~~
204 receiving], receives, or exchanges anything of value from knowing participation in:

205 (a) human trafficking for forced labor or for forced sexual exploitation in violation of
206 Section 76-5-308 is guilty of a second degree felony; and

207 (b) human smuggling is guilty of a third degree felony.

208 (5) A person commits a separate offense of human trafficking or human smuggling for
209 each person who is smuggled or trafficked under Section 76-5-308 or 76-5-310.

210 Section 7. Section **76-5-310** is amended to read:

211 **76-5-310. Aggravated human trafficking and aggravated human smuggling --**
212 **Penalties.**

213 (1) An actor commits aggravated human trafficking for forced labor or forced sexual

214 exploitation or aggravated human smuggling if, in the course of committing a human
215 trafficking for forced labor or for forced sexual exploitation, a violation of Section 76-5-308, or
216 human smuggling offense under Section ~~[76-5-309]~~ 76-5-308, the offense:

- 217 (a) results in the death of the trafficked or smuggled person;
218 (b) results in serious bodily injury of the trafficked or smuggled person;
219 (c) involves:
220 (i) rape under Section 76-5-402;
221 (ii) rape of a child under Section 76-5-402.1;
222 (iii) object rape under Section 76-5-402.2;
223 (iv) object rape of a child under Section 76-5-402.3;
224 (v) forcible sodomy under Section 76-5-403;
225 (vi) sodomy on a child under Section 76-5-403.1;
226 (vii) aggravated sexual abuse of a child under Section 76-5-404.1; or
227 (viii) aggravated sexual assault under 76-5-405;
228 (d) involves 10 or more ~~[than 10]~~ victims in a single episode of human trafficking or
229 human smuggling; or
230 (e) involves a victim who is held against the victim's will for longer than ~~[180]~~ 30
231 consecutive days.

232 (2) An actor commits aggravated human trafficking for forced labor or forced sexual
233 exploitation if the ~~[offense involves a victim who is younger than 18 years of age at the time of~~
234 ~~the commission of the offense of trafficking]~~ actor recruits, harbors, transports, or obtains a
235 child for forced labor or forced sexual exploitation.

236 (3) An actor commits aggravated human smuggling if the actor commits human
237 smuggling under ~~[Subsection 76-5-309(2)]~~ Section 76-5-308 and any human being whom the
238 person engages in smuggling is:

- 239 (a) ~~[younger than 18 years of age]~~ a child; and
240 (b) not accompanied by a family member who is 18 years of age or older.

241 (4) (a) Aggravated human trafficking ~~[for forced labor or forced sexual exploitation~~
242 ~~and aggravated human smuggling for profit or commercial purposes are each]~~ is a first degree
243 felony.

244 (b) Aggravated human smuggling is a second degree felony.

245 ~~[(b)]~~ (c) Aggravated human trafficking and aggravated human smuggling are each a
246 separate offense from any other crime committed in relationship to the commission of either of
247 these offenses.

248 Section 8. Section **76-5-404.1** is amended to read:

249 **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

250 (1) As used in this section, "child" means a person under the age of 14.

251 (2) A person commits sexual abuse of a child if, under circumstances not amounting to
252 rape of a child, object rape of a child, sodomy ~~[upon]~~ on a child, or an attempt to commit any
253 of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a
254 female child, or otherwise takes indecent liberties with a child, or causes a child to take
255 indecent liberties with the actor or another with intent to cause substantial emotional or bodily
256 pain to any person or with the intent to arouse or gratify the sexual desire of any person
257 regardless of the sex of any participant.

258 (3) Sexual abuse of a child is punishable as a second degree felony.

259 (4) A person commits aggravated sexual abuse of a child when in conjunction with the
260 offense described in Subsection (2) any of the following circumstances have been charged and
261 admitted or found true in the action for the offense:

262 (a) the offense was committed by the use of a dangerous weapon as defined in Section
263 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or
264 was committed during the course of a ~~[kidnaping]~~ kidnapping;

265 (b) the accused caused bodily injury or severe psychological injury to the victim during
266 or as a result of the offense;

267 (c) the accused was a stranger to the victim or made friends with the victim for the
268 purpose of committing the offense;

269 (d) the accused used, showed, or displayed pornography or caused the victim to be
270 photographed in a lewd condition during the course of the offense;

271 (e) the accused, prior to sentencing for this offense, was previously convicted of any
272 felony, or of a misdemeanor involving a sexual offense;

273 (f) the accused committed the same or similar sexual act upon two or more victims at
274 the same time or during the same course of conduct;

275 (g) the accused committed, in Utah or elsewhere, more than five separate acts, which if

276 committed in Utah would constitute an offense described in this chapter, and were committed
277 at the same time, or during the same course of conduct, or before or after the instant offense;

278 (h) the offense was committed by a person who occupied a position of special trust in
279 relation to the victim; "position of special trust" means that position occupied by a person in a
280 position of authority, who, by reason of that position is able to exercise undue influence over
281 the victim, and includes, but is not limited to, a youth leader or recreational leader who is an
282 adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor,
283 employer, foster parent, babysitter, adult scout leader, natural parent, stepparent, adoptive
284 parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent;

285 (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or
286 sexual acts by the victim with any other person, or sexual performance by the victim before any
287 other person, human trafficking, or human smuggling; or

288 (j) the accused caused the penetration, however slight, of the genital or anal opening of
289 the child by any part or parts of the human body other than the genitals or mouth.

290 (5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of
291 imprisonment of:

292 (a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and
293 which may be for life;

294 (b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact
295 finds that during the course of the commission of the aggravated sexual abuse of a child the
296 defendant caused serious bodily injury to another; or

297 (c) life without parole, if the trier of fact finds that at the time of the commission of the
298 aggravated sexual abuse of a child, the defendant was previously convicted of a grievous
299 sexual offense.

300 (6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a
301 lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and
302 states the reasons for this finding on the record, the court may impose a term of imprisonment
303 of not less than:

304 (a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

305 (b) for purposes of Subsection (5)(a) or (b):

306 (i) 10 years and which may be for life; or

307 (ii) six years and which may be for life.

308 (7) The provisions of Subsection (6) do not apply when a person is sentenced under
309 Subsection (5)(c).

310 (8) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

311 Section 9. Section **76-5-406** is amended to read:

312 **76-5-406. Sexual offenses against the victim without consent of victim --**

313 **Circumstances.**

314 An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a
315 child, object rape, attempted object rape, object rape of a child, attempted object rape of a
316 child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy [~~upon~~]
317 on a child, attempted sodomy [~~upon~~] on a child, forcible sexual abuse, attempted forcible
318 sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual
319 abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse is
320 without consent of the victim under any of the following circumstances:

321 (1) the victim expresses lack of consent through words or conduct;

322 (2) the actor overcomes the victim through the actual application of physical force or
323 violence;

324 (3) the actor is able to overcome the victim through concealment or by the element of
325 surprise;

326 (4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the
327 immediate future against the victim or any other person, and the victim perceives at the time
328 that the actor has the ability to execute this threat; or

329 (ii) the actor coerces the victim to submit by threatening to retaliate in the future
330 against the victim or any other person, and the victim believes at the time that the actor has the
331 ability to execute this threat;

332 (b) as used in this Subsection (4), "to retaliate" includes [~~but is not limited to~~] threats
333 of physical force, [~~kidnaping~~] kidnapping, or extortion;

334 (5) the victim has not consented and the actor knows the victim is unconscious,
335 unaware that the act is occurring, or physically unable to resist;

336 (6) the actor knows that as a result of mental disease or defect, the victim is at the time
337 of the act incapable either of appraising the nature of the act or of resisting it;

338 (7) the actor knows that the victim submits or participates because the victim
339 erroneously believes that the actor is the victim's spouse;

340 (8) the actor intentionally impaired the power of the victim to appraise or control his or
341 her conduct by administering any substance without the victim's knowledge;

342 (9) the victim is younger than 14 years of age;

343 (10) the victim is younger than 18 years of age and at the time of the offense the actor
344 was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of
345 special trust in relation to the victim as defined in Subsection 76-5-404.1(4)(h);

346 (11) the victim is 14 years of age or older, but younger than 18 years of age, and the
347 actor is more than three years older than the victim and entices or coerces the victim to submit
348 or participate, under circumstances not amounting to the force or threat required under
349 Subsection (2) or (4); or

350 (12) the actor is a health professional or religious counselor, as those terms are defined
351 in this Subsection (12), the act is committed under the guise of providing professional
352 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed
353 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment
354 to the extent that resistance by the victim could not reasonably be expected to have been
355 manifested[~~For~~]; for purposes of this Subsection (12):

356 (a) "health professional" means an individual who is licensed or who holds himself or
357 herself out to be licensed, or who otherwise provides professional physical or mental health
358 services, diagnosis, treatment, or counseling including, but not limited to, a physician,
359 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,
360 social service worker, clinical social worker, certified social worker, marriage and family
361 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse
362 specialist, or substance abuse counselor; and

363 (b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized
364 member of the clergy.

365 Section 10. Section **76-9-1003** is amended to read:

366 **76-9-1003. Detention or arrest -- Determination of immigration status.**

367 (1) (a) Except as provided in Subsection (1)(b), (c), or (d), any law enforcement officer
368 who, acting in the enforcement of any state law or local ordinance, conducts any lawful stop,

369 detention, or arrest of a person as specified in Subsection (1)(a)(i) or (ii), and the person is
370 unable to provide to the law enforcement officer a document listed in Subsection 76-9-1004(1)
371 and the officer is otherwise unable to verify the identity of the person, the officer:

372 (i) shall request verification of the citizenship or the immigration status of the person
373 under 8 U.S.C. Sec. 1373(c), except as allowed under Subsection (1)(b), (c), or (d), if the
374 person is arrested for an alleged offense that is a class A misdemeanor or a felony; and

375 (ii) may attempt to verify the immigration status of the person, except as exempted
376 under Subsection (1)(b), (c), or (d), if the alleged offense is a class B or C misdemeanor, except
377 that if the person is arrested and booked for a class B or C misdemeanor, the arresting law
378 enforcement officer or the law enforcement agency booking the person shall attempt to verify
379 the immigration status of the person.

380 (b) In individual cases, the law enforcement officer may forego the verification of
381 immigration status under Subsection (1)(a) if the determination could hinder or obstruct a
382 criminal investigation.

383 (c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a
384 school resource officer for any elementary or secondary school.

385 (d) Subsection (1)(a) does not apply to a county or municipality when it has only one
386 law enforcement officer on duty and response support from another law enforcement agency is
387 not available.

388 (2) When a law enforcement officer makes a lawful stop, detention, or arrest under
389 Subsection (1) of the operator of a vehicle, and while investigating or processing the primary
390 offense, the officer makes observations that give the officer reasonable suspicion that the
391 operator or any of the passengers in the vehicle are violating Section ~~[76-5-309]~~ 76-5-308,
392 76-5-310, or 76-10-2901, which concern smuggling and transporting illegal aliens, the officer
393 shall, to the extent possible within a reasonable period of time:

394 (a) detain the occupants of the vehicle to investigate the suspected violations; and

395 (b) inquire regarding the immigration status of the occupants of the vehicle.

396 (3) When a person under Subsection (1) is arrested or booked into a jail, juvenile
397 detention facility, or correctional facility, the arresting officer or the booking officer shall
398 ensure that a request for verification of immigration status of the arrested or booked person is
399 submitted as promptly as is reasonably possible.

400 (4) The law enforcement agency that has custody of a person verified to be an illegal
401 alien shall request that the United States Department of Homeland Security issue a detainer
402 requesting transfer of the illegal alien into federal custody.

403 (5) A law enforcement officer may not consider race, color, or national origin in
404 implementing this section, except to the extent permitted by the constitutions of the United
405 States and this state.

406 Section 11. Section **76-10-1301** is amended to read:

407 **76-10-1301. Definitions.**

408 For the purposes of this part:

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

410 ~~[(+)]~~ (2) "House of prostitution" means a place where prostitution or promotion of
411 prostitution is regularly carried on by one or more persons under the control, management, or
412 supervision of another.

413 ~~[(2)]~~ (3) "Inmate" means a person who engages in prostitution in or through the agency
414 of a house of prostitution.

415 ~~[(3)]~~ (4) "Public place" means any place to which the public or any substantial group of
416 the public has access.

417 ~~[(4)]~~ (5) "Sexual activity" means acts of masturbation, sexual intercourse, or any sexual
418 act involving the genitals of one person and the mouth or anus of another person, regardless of
419 the sex of either participant.

420 Section 12. Section **76-10-1303** is amended to read:

421 **76-10-1303. Patronizing a prostitute.**

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

423 (a) ~~[he]~~ pays or offers or agrees to pay another person a fee for the purpose of engaging
424 in an act of sexual activity; or

425 (b) ~~[he]~~ enters or remains in a house of prostitution for the purpose of engaging in
426 sexual activity.

427 (2) Patronizing a prostitute is a class B misdemeanor, except as provided in Subsection
428 (3) or in Section 76-10-1309.

429 (3) If the patronizing of a prostitute under Subsection (1)(a) involves a child as the
430 other person, a violation of Subsection (1)(a) is a third degree felony.

431 Section 13. Section **76-10-1306** is amended to read:

432 **76-10-1306. Aggravated exploitation of prostitution.**

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

434 (a) in committing an act of exploiting prostitution, as defined in Section 76-10-1305,
435 ~~[he]~~ the person uses any force, threat, or fear against any person; ~~[or]~~

436 (b) the person procured, transported, or persuaded or with whom ~~[he]~~ the person shares
437 the proceeds of prostitution is ~~[under 18 years of age]~~ a child or is the ~~[wife]~~ spouse of the
438 actor[-]; or

439 (c) in the course of committing exploitation of prostitution, a violation of Section
440 76-10-1305, the person commits human trafficking or human smuggling, a violation of Section
441 76-5-308.

442 (2) Aggravated exploitation of prostitution is a second degree felony ~~[of the second~~
443 ~~degree]~~, except under Subsection (3).

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

445 Section 14. Section **76-10-1313** is amended to read:

446 **76-10-1313. Sexual solicitation -- Penalty.**

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

448 (a) offers or agrees to commit any sexual activity with another person for a fee;

449 (b) pays or offers or agrees to pay a fee to another person to commit any sexual activity;

450 or

451 (c) with intent to engage in sexual activity for a fee or to pay another person to commit
452 any sexual activity for a fee engages in, offers or agrees to engage in, or requests or directs
453 another to engage in any of the following acts:

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

456 (ii) masturbation;

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

459 (iv) any act of lewdness.

460 (2) An intent to engage in sexual activity for a fee may be inferred from a person's
461 engaging in, offering or agreeing to engage in, or requesting or directing another to engage in

462 any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.

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

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

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

471 Section 15. Section **77-23a-8** is amended to read:

472 **77-23a-8. Court order to authorize or approve interception -- Procedure.**

473 (1) The attorney general of the state, any assistant attorney general specially designated
474 by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy
475 district attorney specially designated by the county attorney or by the district attorney, may
476 authorize an application to a judge of competent jurisdiction for an order for an interception of
477 wire, electronic, or oral communications by any law enforcement agency of the state, the
478 federal government or of any political subdivision of the state that is responsible for
479 investigating the type of offense for which the application is made.

480 (2) The judge may grant the order in conformity with the required procedures when the
481 interception sought may provide or has provided evidence of the commission of:

482 (a) any act:

483 (i) prohibited by the criminal provisions of:

484 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

485 (B) Title 58, Chapter 37c, Utah Controlled ~~[Substances]~~ Substance Precursor Act; or

486 (C) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

487 (ii) punishable by a term of imprisonment of more than one year;

488 (b) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
489 Securities Act and punishable by a term of imprisonment of more than one year;

490 (c) an offense:

491 (i) of:

492 (A) attempt, Section 76-4-101;

- 493 (B) conspiracy, Section 76-4-201;
- 494 (C) solicitation, Section 76-4-203; and
- 495 (ii) punishable by a term of imprisonment of more than one year;
- 496 (d) a threat of terrorism offense punishable by a maximum term of imprisonment of
- 497 more than one year, Section 76-5-107.3;
- 498 (e) (i) aggravated murder, Section 76-5-202;
- 499 (ii) murder, Section 76-5-203; or
- 500 (iii) manslaughter, Section 76-5-205;
- 501 (f) (i) kidnapping, Section 76-5-301;
- 502 (ii) child kidnapping, Section 76-5-301.1; [~~or~~]
- 503 (iii) aggravated kidnapping, Section 76-5-302;
- 504 (iv) human trafficking or human smuggling, Section 76-5-308; or
- 505 (v) aggravated human trafficking or aggravated human smuggling, Section 76-5-310;
- 506 (g) (i) arson, Section 76-6-102; or
- 507 (ii) aggravated arson, Section 76-6-103;
- 508 (h) (i) burglary, Section 76-6-202; or
- 509 (ii) aggravated burglary, Section 76-6-203;
- 510 (i) (i) robbery, Section 76-6-301; or
- 511 (ii) aggravated robbery, Section 76-6-302;
- 512 (j) an offense:
- 513 (i) of:
- 514 (A) theft, Section 76-6-404;
- 515 (B) theft by deception, Section 76-6-405; or
- 516 (C) theft by extortion, Section 76-6-406; and
- 517 (ii) punishable by a maximum term of imprisonment of more than one year;
- 518 (k) an offense of receiving stolen property [~~offense~~] that is punishable by a maximum
- 519 term of imprisonment of more than one year, Section 76-6-408;
- 520 (l) a financial card transaction offense punishable by a maximum term of imprisonment
- 521 of more than one year, Section [~~76-6-506.1;~~] 76-6-506.2, 76-6-506.3, [~~76-6-506.4;~~] 76-6-506.5,
- 522 or 76-6-506.6;
- 523 (m) bribery of a labor official, Section 76-6-509;

- 524 (n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;
- 525 (o) a criminal simulation offense punishable by a maximum term of imprisonment of
526 more than one year, Section 76-6-518;
- 527 (p) criminal usury, Section 76-6-520;
- 528 (q) a fraudulent insurance act offense punishable by a maximum term of imprisonment
529 of more than one year, Section 76-6-521;
- 530 (r) a violation of Title 76, Chapter 6, Part 7, Utah Computer Crimes Act, punishable by
531 a maximum term of imprisonment of more than one year, Section 76-6-703;
- 532 (s) bribery to influence official or political actions, Section 76-8-103;
- 533 (t) misusing public money, Section 76-8-402;
- 534 (u) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 535 (v) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 536 (w) tampering with a juror, retaliation against a juror, Section 76-8-508.5;
- 537 (x) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 538 (y) obstruction of justice, Section 76-8-306;
- 539 (z) destruction of property to interfere with preparation for defense or war, Section
540 76-8-802;
- 541 (aa) an attempt to commit crimes of sabotage, Section 76-8-804;
- 542 (bb) conspiracy to commit crimes of sabotage, Section 76-8-805;
- 543 (cc) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 544 (dd) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 545 (ee) riot punishable by a maximum term of imprisonment of more than one year,
546 Section 76-9-101;
- 547 (ff) dog fighting, training dogs for fighting, or dog fighting exhibitions punishable by a
548 maximum term of imprisonment of more than one year, Section 76-9-301.1;
- 549 (gg) possession, use, or removal of an explosive, chemical, or incendiary device and
550 parts, [~~possession, use, or removal,~~] Section 76-10-306;
- 551 (hh) delivery to a common carrier or mailing of an explosive, chemical, or incendiary
552 device, [~~delivery to a common carrier or mailing,~~] Section 76-10-307;
- 553 (ii) exploiting prostitution, Section 76-10-1305;
- 554 (jj) aggravated exploitation of prostitution, Section 76-10-1306;

555 (kk) bus hijacking, assault with intent to commit hijacking, dangerous weapon or
556 firearm, Section 76-10-1504;

557 (ll) discharging firearms and hurling missiles, Section 76-10-1505;

558 (mm) violations of the Pattern of Unlawful Activity Act and the offenses listed under
559 the definition of unlawful activity in the act, including the offenses not punishable by a
560 maximum term of imprisonment of more than one year when those offenses are investigated as
561 predicates for the offenses prohibited by the act, Section 76-10-1602;

562 (nn) communications fraud, Section 76-10-1801;

563 (oo) money laundering, Sections 76-10-1903 and 76-10-1904; or

564 (pp) reporting by a person engaged in a trade or business when the offense is
565 punishable by a maximum term of imprisonment of more than one year, Section 76-10-1906.

566 Section 16. Section **77-38-3** is amended to read:

567 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**
568 **notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact**
569 **order.**

570 (1) Within seven days of the filing of felony criminal charges against a defendant, the
571 prosecuting agency shall provide an initial notice to reasonably identifiable and locatable
572 victims of the crime contained in the charges, except as otherwise provided in this chapter.

573 (2) The initial notice to the victim of a crime shall provide information about electing
574 to receive notice of subsequent important criminal justice hearings listed in Subsections
575 77-38-2(5)(a) through (f) and rights under this chapter.

576 (3) The prosecuting agency shall provide notice to a victim of a crime for the important
577 criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f), which the victim
578 has requested.

579 (4) (a) The responsible prosecuting agency may provide initial and subsequent notices
580 in any reasonable manner, including telephonically, electronically, orally, or by means of a
581 letter or form prepared for this purpose.

582 (b) In the event of an unforeseen important criminal justice hearing, listed in
583 Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith
584 attempt to contact the victim by telephone shall be considered sufficient notice, provided that
585 the prosecuting agency subsequently notifies the victim of the result of the proceeding.

586 (5) (a) The court shall take reasonable measures to ensure that its scheduling practices
587 for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for
588 victims of crimes to be notified.

589 (b) The court shall also consider whether any notification system it might use to
590 provide notice of judicial proceedings to defendants could be used to provide notice of those
591 same proceedings to victims of crimes.

592 (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give
593 notice to the responsible prosecuting agency of any motion for modification of any
594 determination made at any of the important criminal justice hearings provided in Subsections
595 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the
596 prosecuting agency may comply with its notification obligation.

597 (7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and
598 Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

599 (b) The board may provide notice in any reasonable manner, including telephonically,
600 electronically, orally, or by means of a letter or form prepared for this purpose.

601 (8) Prosecuting agencies and the Board of Pardons and Parole are required to give
602 notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through
603 (f) only where the victim has responded to the initial notice, requested notice of subsequent
604 proceedings, and provided a current address and telephone number if applicable.

605 (9) (a) Law enforcement and criminal justice agencies shall refer any requests for
606 notice or information about crime victim rights from victims to the responsible prosecuting
607 agency.

608 (b) In a case in which the Board of Pardons and Parole is involved, the responsible
609 prosecuting agency shall forward any request for notice it has received from a victim to the
610 Board of Pardons and Parole.

611 (10) In all cases where the number of victims exceeds 10, the responsible prosecuting
612 agency may send any notices required under this chapter in its discretion to a representative
613 sample of the victims.

614 (11) (a) A victim's address, telephone number, and victim impact statement maintained
615 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice
616 Services, Department of Corrections, and Board of Pardons and Parole, for purposes of

617 providing notice under this section, is classified as protected as provided in Subsection
618 63G-2-305(10).

619 (b) The victim's address, telephone number, and victim impact statement is available
620 only to the following persons or entities in the performance of their duties:

- 621 (i) a law enforcement agency, including the prosecuting agency;
- 622 (ii) a victims' right committee as provided in Section 77-37-5;
- 623 (iii) a governmentally sponsored victim or witness program;
- 624 (iv) the Department of Corrections;
- 625 (v) the Utah Office for Victims of Crime;
- 626 (vi) the Commission on Criminal and Juvenile Justice; and
- 627 (vii) the Board of Pardons and Parole.

628 (12) The notice provisions as provided in this section do not apply to misdemeanors as
629 provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section
630 77-38-2.

631 (13) (a) When a defendant is charged with a felony crime under Sections 76-5-301
632 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling; Sections
633 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306 regarding
634 aggravated exploitation of prostitution, the court may, during any court hearing where the
635 defendant is present, issue a pretrial criminal no contact order:

636 (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise
637 communicating with the victim directly or through a third party;

638 (ii) ordering the defendant to stay away from the residence, school, place of
639 employment of the victim, and the premises of any of these, or any specified place frequented
640 by the victim or any designated family member of the victim directly or through a third party;
641 and

642 (iii) ordering any other relief that the court considers necessary to protect and provide
643 for the safety of the victim and any designated family or household member of the victim.

644 (b) Violation of a pretrial criminal no contact order issued pursuant to this section is a
645 third degree felony.

646 (c) (i) The court shall provide to the victim a certified copy of any pretrial criminal no
647 contact order that has been issued if the victim can be located with reasonable effort.

648 (ii) The court shall also transmit the pretrial criminal no contact order to the statewide
649 domestic violence network in accordance with Section 78B-7-113.

650 Section 17. Section **78B-7-113** is amended to read:

651 **78B-7-113. Statewide domestic violence network -- Peace officers' duties --**
652 **Prevention of abuse in absence of order -- Limitation of liability.**

653 (1) (a) Law enforcement units, the Department of Public Safety, and the Administrative
654 Office of the Courts shall utilize statewide procedures to ensure that peace officers at the scene
655 of an alleged violation of a protective order or pretrial criminal no contact order have
656 immediate access to information necessary to verify the existence and terms of that order, and
657 other orders of the court required to be made available on the network by the provisions of this
658 chapter [~~or~~], Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or Section 77-38-3.
659 Those officers shall use every reasonable means to enforce the court's order, in accordance with
660 the requirements and procedures of this chapter [~~and~~], Title 77, Chapter 36, Cohabitant Abuse
661 Procedures Act, and Section 77-38-3.

662 (b) The Administrative Office of the Courts, in cooperation with the Department of
663 Public Safety and the Criminal Investigations and Technical Services Division, established in
664 Section 53-10-103, shall provide for a single, statewide network containing:

- 665 (i) all orders for protection issued by a court of this state; and
- 666 (ii) all other court orders or reports of court action that are required to be available on
667 the network under this chapter [~~and~~], Title 77, Chapter 36, Cohabitant Abuse Procedures Act,
668 and Section 77-38-3.

669 (c) The entities described in Subsection (1)(b) may utilize the same mechanism as the
670 statewide warrant system, described in Section 53-10-208.

671 (d) All orders and reports required to be available on the network shall be available
672 within 24 hours after court action. If the court that issued the order is not part of the state court
673 computer system, the orders and reports shall be available on the network within 72 hours.

674 (e) The information contained in the network shall be available to a court, law
675 enforcement officer, or agency upon request.

676 (2) When any peace officer has reason to believe a cohabitant or child of a cohabitant
677 is being abused, or that there is a substantial likelihood of immediate danger of abuse, although
678 no protective order has been issued, that officer shall use all reasonable means to prevent the

679 abuse, including:

680 (a) remaining on the scene as long as it reasonably appears there would otherwise be
681 danger of abuse;

682 (b) making arrangements for the victim to obtain emergency medical treatment;

683 (c) making arrangements for the victim to obtain emergency housing or shelter care;

684 (d) explaining to the victim his or her rights in these matters;

685 (e) asking the victim to sign a written statement describing the incident of abuse; or

686 (f) arresting and taking into physical custody the abuser in accordance with the

687 provisions of Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

688 (3) No person or institution may be held criminally or civilly liable for the performance
689 of, or failure to perform, any duty established by this chapter, so long as that person acted in
690 good faith and without malice.

Legislative Review Note

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