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HUMAN TRAFFICKING AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: _____

LONG TITLE

General Description:

This bill clarifies and amends certain language regarding human trafficking and creates an offense for trafficking a vulnerable adult.

Highlighted Provisions:

This bill:

- ▶ clarifies that human trafficking of a child is an offense for which no statute of limitations applies;
- ▶ clarifies that those who knowingly benefit from human trafficking of a child can be charged as perpetrators;
- ▶ clarifies that victims of human trafficking may pursue civil actions against anyone who knowingly benefitted from the trafficking;
- ▶ replaces references to "children engaged in prostitution" with "children engaged in commercial sex";
- ▶ directs law enforcement to investigate possible human trafficking of a child when they encounter a child engaged in commercial sex; and
- ▶ creates a first degree felony offense for trafficking a vulnerable adult.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **76-1-301**, as last amended by Laws of Utah 2013, Chapter 196

31 **76-5-305**, as enacted by Laws of Utah 2001, Chapter 301

32 **76-5-309**, as last amended by Laws of Utah 2015, Chapter 160

33 **76-10-1302**, as last amended by Laws of Utah 2017, Chapter 433

34 **77-38-15**, as last amended by Laws of Utah 2017, Chapter 447

35 ENACTS:

36 **76-5-311**, Utah Code Annotated 1953



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

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

40 **76-1-301. Offenses for which prosecution may be commenced at any time.**

41 (1) As used in this section:

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

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

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

50 (a) capital felony;

51 (b) aggravated murder;

52 (c) murder;

53 (d) manslaughter;

54 (e) child abuse homicide;

55 (f) aggravated kidnapping;

56 (g) child kidnapping;

57 (h) rape;

58 (i) rape of a child;

- 59 (j) object rape;
- 60 (k) object rape of a child;
- 61 (l) forcible sodomy;
- 62 (m) sodomy on a child;
- 63 (n) sexual abuse of a child;
- 64 (o) aggravated sexual abuse of a child;
- 65 (p) aggravated sexual assault;
- 66 (q) any predicate offense to a murder or aggravating offense to an aggravated murder;
- 67 (r) aggravated human trafficking or aggravated human smuggling in violation of

68 Section [76-5-310](#); [~~or~~]

- 69 (s) aggravated exploitation of prostitution involving a child, under Section
- 70 [76-10-1306](#)[~~;~~]; or

71 (t) human trafficking of a child, under Section [76-5-308.5](#).

72 Section 2. Section **76-5-305** is amended to read:

73 **76-5-305. Defenses.**

74 (1) It is a defense under this part that:

75 [~~(1)~~] (a) the actor was acting under a reasonable belief that:

76 [~~(a)~~] (i) the conduct was necessary to protect any person from imminent bodily injury
77 or death; or

78 [~~(b)~~] (ii) the detention or restraint was authorized by law; or

79 [~~(2)~~] (b) the alleged victim is younger than 18 years of age or is mentally incompetent,
80 and the actor was acting under a reasonable belief that the custodian, guardian, legal guardian,
81 custodial parent, or person acting in loco parentis to the victim would, if present, have
82 consented to the actor's conduct.

83 (2) Subsection (1)(b) may not be used as a defense to conduct described in Section
84 [76-5-308.5](#).

85 Section 3. Section **76-5-309** is amended to read:

86 **76-5-309. Human trafficking and human smuggling -- Penalties.**

87 (1) Human trafficking for forced labor and human trafficking for forced sexual
88 exploitation are each a second degree felony, except under Section [76-5-310](#).

89 (2) Human smuggling under Section [76-5-308](#) of one or more persons is a third degree

90 felony, except under Section 76-5-310.

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

94 (4) Under circumstances not amounting to aggravated sexual abuse of a child, a
95 violation of Subsection 76-5-404.1(4)(h), a person who benefits, receives, or exchanges
96 anything of value from knowing participation in:

97 (a) human trafficking for forced labor or for forced sexual exploitation in violation of
98 Section 76-5-308 is guilty of a second degree felony; [~~and~~]

99 (b) human smuggling is guilty of a third degree felony[:]; and

100 (c) human trafficking of a child is guilty of a first degree felony.

101 (5) A person commits a separate offense of human trafficking, human trafficking of a
102 child, or human smuggling for each person who is smuggled or trafficked under Section
103 76-5-308, 76-5-308.5, or 76-5-310.

104 Section 4. Section 76-5-311 is enacted to read:

105 **76-5-311. Human trafficking of a vulnerable adult -- Penalties.**

106 (1) As used in this section:

107 (a) "Commercial sexual activity with a vulnerable adult" means any sexual act with a
108 vulnerable adult for which anything of value is given to or received by any individual.

109 (b) "Vulnerable adult" means the same as that term is defined in Subsection
110 76-5-111(1).

111 (2) An actor commits human trafficking of a vulnerable adult if the actor recruits,
112 harbors, transports, obtains, patronizes, or solicits a vulnerable adult for sexual exploitation or
113 forced labor.

114 (3) (a) Human trafficking of a vulnerable adult for forced labor includes forced labor
115 in:

116 (i) industrial facilities;

117 (ii) sweatshops;

118 (iii) households;

119 (iv) agricultural enterprises; or

120 (v) any other workplace.

121 (b) Human trafficking of a vulnerable adult for sexual exploitation includes all forms
122 of commercial sexual activity with a vulnerable adult involving:

- 123 (i) sexually explicit performances;
- 124 (ii) prostitution;
- 125 (iii) participation in the production of pornography;
- 126 (iv) performance in a strip club; or
- 127 (v) exotic dancing or display.

128 (4) Human trafficking of a vulnerable adult in violation of this section is a first degree
129 felony.

130 Section 5. Section **76-10-1302** is amended to read:

131 **76-10-1302. Prostitution.**

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

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

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

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

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

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

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

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

148 (ii) "Child engaged in [~~prostitution~~] commercial sex" means a child who engages in
149 conduct described in Subsection (1).

150 (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to
151 commit or engage in any sexual activity with another person for a fee or the functional

152 equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

153 (iv) "Division" means the Division of Child and Family Services created in Section
154 62A-4a-103.

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

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

158 (i) conduct an investigation regarding possible human trafficking of the child pursuant
159 to Section 76-5-308 and Section 76-5-308.5;

160 (ii) refer the child to the division;

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

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

163 (c) When law enforcement has referred the child to the division under Subsection

164 (3)(b)(ii):

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

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

169 Section 6. Section 77-38-15 is amended to read:

170 **77-38-15. Civil action against human traffickers and human smugglers.**

171 (1) A victim of a person that commits the offense of human trafficking or human
172 smuggling under Section 76-5-308, human trafficking of a child under Section 76-5-308.5, [or]
173 aggravated human trafficking or aggravated human smuggling under Section 76-5-310, or
174 benefitting from human trafficking under Subsection 76-5-309(4) may bring a civil action
175 against that person.

176 (2) (a) The court may award actual damages, compensatory damages, punitive
177 damages, injunctive relief, or any other appropriate relief.

178 (b) The court may award treble damages on proof of actual damages if the court finds
179 that the person's acts were willful and malicious.

180 (3) In an action under this section, the court shall award a prevailing victim reasonable
181 attorney fees and costs.

182 (4) An action under this section shall be commenced no later than 10 years after the

183 later of:

184 (a) the day on which the victim was freed from the human trafficking or human
185 smuggling situation;

186 (b) the day on which the victim attains 18 years of age; or

187 (c) if the victim was unable to bring an action due to a disability, the day on which the
188 victim's disability ends.

189 (5) The time period described in Subsection (4) is tolled during a period of time when
190 the victim fails to bring an action due to the person:

191 (a) inducing the victim to delay filing the action;

192 (b) preventing the victim from filing the action; or

193 (c) threatening and causing duress upon the victim in order to prevent the victim from
194 filing the action.

195 (6) The court shall offset damages awarded to the victim under this section by any
196 restitution paid to the victim under Title 77, Chapter 38a, Crime Victims Restitution Act.

197 (7) A victim may bring an action described in this section in any court of competent
198 jurisdiction where:

199 (a) a violation described in Subsection (1) occurred;

200 (b) the victim resides; or

201 (c) the person that commits the offense resides or has a place of business.

202 (8) If the victim is deceased or otherwise unable to represent the victim's own interests
203 in court, a legal guardian, family member, representative of the victim, or court appointee may
204 bring an action under this section on behalf of the victim.

205 (9) This section does not preclude any other remedy available to the victim under the
206 laws of this state or under federal law.

Legislative Review Note
Office of Legislative Research and General Counsel