

**SOLICITATION AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Mike Winder

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**LONG TITLE**

**General Description:**

This bill makes changes to simplify the prosecution of prostitution.

**Highlighted Provisions:**

This bill:

- ▶ renames "house of prostitution" to "place of prostitution";
- ▶ updates the definition of "sexual activity";
- ▶ adds arranging a meeting for the purpose of sexual activity to the crime of prostitution;
- ▶ increases some penalties;
- ▶ requires the maximum fine be ordered upon conviction; and
- ▶ prohibits waiving or suspending the fine.

**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 2013, Chapter 196

**76-10-1302**, as last amended by Laws of Utah 2016, Chapter 109

**76-10-1303**, as last amended by Laws of Utah 2015, Chapter 363

**76-10-1304**, as last amended by Laws of Utah 2012, Chapter 56

**76-10-1305**, as last amended by Laws of Utah 2000, Chapter 1

**76-10-1306**, as last amended by Laws of Utah 2013, Chapter 196

**76-10-1313**, as last amended by Laws of Utah 2015, Chapter 363

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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.**

For the purposes of this part:

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

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

~~[(2)]~~ (3) ~~["House"]~~ "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 persons under the control, management, or supervision of another.

(4) "Public place" means any place to which the public or any substantial group of the public has access.

(5) "Sexual activity" means, regardless of the gender of either participant:

(a) acts of masturbation, sexual intercourse, or any sexual act involving the genitals of one person and the mouth or anus of another person~~[- regardless of the sex of either participant.]; or~~

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

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

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

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

(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) is an inmate of a house of prostitution; or]~~

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

58 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee  
59 or the functional equivalent of a fee; or

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

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

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

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

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

70 (ii) "Child engaged in prostitution" means a child who engages in conduct described in  
71 Subsection (1).

72 (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to  
73 commit or engage in any sexual activity with another person for a fee or the functional  
74 equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

75 (iv) "Division" means the Division of Child and Family Services created in Section  
76 62A-4a-103.

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

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

80 (i) conduct an investigation;

81 (ii) refer the child to the division;

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

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

84 (c) When law enforcement has referred the child to the division under Subsection  
85 (3)(b)(ii):

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

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

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

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

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

(a) pays or offers or agrees to pay another person 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 ~~[house]~~ place of prostitution for the purpose of engaging in sexual activity.

(2) Patronizing a prostitute is a class ~~[B]~~ A misdemeanor, except as provided in Subsection (3) ~~[or]~~, (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 local ordinance adopted under Section 76-10-1307 is a class A misdemeanor.

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

~~[(4)]~~ (5) If the patronizing of a prostitute under Subsection (1)(a) involves a child as the other person, a violation of Subsection (1)(a) is a third degree felony.

(6) 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.

Section 4. Section 76-10-1304 is amended to read:

**76-10-1304. Aiding prostitution.**

(1) A person is guilty of aiding prostitution if the person:

(a) (i) solicits a person to patronize a prostitute;

(ii) procures or attempts to procure a prostitute for a patron; or

(iii) leases, operates, or otherwise permits a place controlled by the actor, alone or in association with another, to be used for prostitution or the promotion of prostitution; or

(iv) provides any service or commits any act that enables another person to commit a violation of this Subsection (1)(a) or facilitates another person's ability to commit any violation of this Subsection (1)(a); or

(b) solicits, receives, or agrees to receive any benefit for committing any of the acts prohibited by Subsection (1)(a).

(2) Aiding prostitution is a class [B] A misdemeanor. However, a person who is convicted a second time, and on all subsequent convictions, under this section or under a local ordinance adopted in compliance with Section 76-10-1307 is guilty of a [~~class A misdemeanor~~] third degree felony.

(3) 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.

Section 5. Section 76-10-1305 is amended to read:

**76-10-1305. Exploiting prostitution.**

(1) A person is guilty of exploiting prostitution if [~~he~~] the person:

(a) procures [~~an inmate~~] a person for a [~~house~~] place of prostitution [~~or place in a house of prostitution for one who would be an inmate~~];

(b) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(c) transports a person into or within this state with a purpose to promote that person's engaging in prostitution or procuring or paying for transportation with that purpose;

(d) not being a child or legal dependent of a prostitute, shares the proceeds of prostitution with a prostitute pursuant to their understanding that he is to share therein; or

(e) owns, controls, manages, supervises, or otherwise keeps, alone or in association with another, a [~~house~~] place of prostitution or a business where prostitution [~~business~~] occurs or is arranged, encouraged, supported, or promoted.

(2) Exploiting prostitution is a felony of the third degree.

(3) 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.

Section 6. Section **76-10-1306** is amended to read:

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

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

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

(b) the person procured, transported, or persuaded or with whom the person shares the proceeds of prostitution is a child or is the spouse of the actor; or

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

(2) Aggravated exploitation of prostitution is a second degree felony, except under Subsection (3).

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

(4) 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.

Section 7. Section **76-10-1313** is amended to read:

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

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

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

(c) with intent to engage in sexual activity for a fee or the functional equivalent of a fee or to pay another person 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 to engage in any of the following acts:

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

(ii) masturbation;

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

(iv) any act of lewdness.

(2) An intent to engage in sexual activity for a fee may be inferred from a person'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)(c) under the totality of the existing circumstances.

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

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

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