

Since 2011, Shared Hope has laid the foundation for transformational policy, practice, and cultural change by supporting state legislators and stakeholders to identify gaps in the fabric of laws needed to address child sex trafficking. The Report Cards on Child & Youth Sex Trafficking build upon the progress already made, challenging states to take the next step in the fight against sex trafficking by focusing on the area where the largest gaps remain—victim protections. This report provides a thorough review of Utah’s laws related to both criminalization and victim protections while providing recommendations for addressing gaps in the law.



ISSUE 1: Criminal Provisions

Policy Goal 1.1 The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

Utah Code Ann. § 76-5-308.5(2), (3) (Human trafficking of a child – Penalties) expressly applies to buyers of commercial sex with minors based on the term “patronizes.” It states,

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

(3)

....

(b) Human trafficking of a child for sexual exploitation includes all forms of commercial sexual activity with a child,¹ including sexually explicit performance, prostitution, participation in the production of pornography, performance in a strip club, and exotic dancing or display.

Further, Utah Code Ann. § 76-5-308.5 can apply to buyers based on the terms “solicits” and, following federal precedent, “obtains.”²

¹ Utah Code Ann. § 76-5-308.5(1) defines “commercial sexual activity” as “any sexual act with a child, on account of which anything of value is given to or received by any person.”

² See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain a “latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is

Policy Goal 1.2 Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

Utah law criminalizes both purchasing and soliciting commercial sex with a minor. Pursuant to Utah Code Ann. § 76-10-1303(1) (Patronizing a prostitute),

An individual is guilty of patronizing a prostitute when the individual:

- (a) pays or offers or agrees to pay a prostitute, or an individual the actor believes to be a prostitute, 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.

Further, Utah Code Ann. § 76-10-1313(1) (Sexual solicitation – Penalty) states,

An individual except for a child under Section 76-10-1315 [Safe harbor for children as victims in commercial sex or sexual solicitation] is guilty of sexual solicitation when the individual:

. . . .

- (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) with intent 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 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.

Policy Goal 1.3 Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.

Utah’s CSEC laws address an array of trafficker conduct. Pursuant to Utah Code Ann. § 76-10-1306(1)(b) (Aggravated exploitation of prostitution), “A person is guilty of aggravated exploitation³ if . . . the person procured,

intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227, enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” Id. at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular, the term “obtains”) to the extent such interpretation does not conflict with state case law.

³ Pursuant to Utah Code Ann. § 76-10-1305(1) (Exploiting prostitution),

An individual is guilty of exploiting prostitution if the individual:

- (a) procures an individual for a place of prostitution;
- (b) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

transported, or persuaded or with whom the person shares the proceeds of prostitution is a child or is the spouse of the actor.”

Further, Utah Code Ann. § 76-5-404.1(4)(i) (Sexual abuse of a child – Aggravated sexual abuse of a child) states,

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

....

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

Policy Goal 1.4 Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

Utah law prohibits a mistake of age defense in prosecutions for child sex trafficking and CSEC. Pursuant to Utah Code Ann. § 76-2-304.5 (Mistake as to victim’s age not a defense),

(1) It is not a defense to the crime of . . . sexual abuse of a child, a violation of Section 76-5-404.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4); or an attempt to commit any of these offenses, that the actor mistakenly believed the victim to be 14 years of age or older at the time of the alleged offense or was unaware of the victim’s true age.

....

(3) It is not a defense to the crime of aggravated human trafficking or aggravated human smuggling, a violation of Section 76-5-310, or human trafficking of a child, a violation of Section 76-5-308.5, that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim’s true age.

....

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

- (a) patronizing a prostitute, a violation of Section 76-10-1303;
- (b) aggravated exploitation of a prostitute, a violation of Section 76-10-1306; or
- (c) sexual solicitation, a violation of Section 76-10-1313.

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- (c) transports an individual into or within this state with a purpose to promote that individual’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, or an individual the actor believes to be a prostitute, pursuant to their understanding that the actor is to share therein; or
 - (e) owns, controls, manages, supervises, or otherwise keeps, alone or in association with another, a place of prostitution or a business where prostitution occurs or is arranged, encouraged, supported, or promoted.

⁴ Pursuant to Utah Code Ann. § 76-5-404.1(2),

An individual commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, pubic area, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, with intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual regardless of the sex of any participant.

Policy Goal 1.5 Use of a law enforcement decoy is not an available defense in child sex trafficking cases.

Although state trafficking laws do not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, Utah’s criminal attempt statute, Utah Code Ann. § 76-4-101 (Attempt – Elements of offense), could provide prosecutors with an alternative avenue to prosecute those cases. Utah Code Ann. § 76-4-101 states,

- (1) For purposes of this part, a person is guilty of an attempt to commit a crime if he:
 - (a) engages in conduct constituting a substantial step toward commission of the crime; and
 - (b)
 - (i) intends to commit the crime; or
 - (ii) when causing a particular result is an element of the crime, he acts with an awareness that his conduct is reasonably certain to cause that result.
- (2) For purposes of this part, conduct constitutes a substantial step if it strongly corroborates the actor’s mental state as defined in Subsection (1)(b).
- (3) A defense to the offense of attempt does not arise:
 -
 - (b) due to factual or legal impossibility if the offense could have been committed if the attendant circumstances had been as the actor believed them to be.

Accordingly, an offender could be found guilty of attempting to commit a child sex trafficking offense despite the use of a law enforcement decoy.

Policy Goal 1.6 The trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme.

Utah’s trafficking laws do not expressly allow for business entity liability.

- 1.6.1 Recommendation: Ensure business entities can be held liable under state trafficking laws and establish a business-specific penalty scheme.

Policy Goal 1.7 State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.

Financial penalties, including criminal fines, fees, and asset forfeiture, paid by convicted trafficking and CSEC offenders are not required to be directed into a victim services fund.⁵

⁵ Regarding asset forfeiture, Utah Code Ann. § 24-4-102(1) (Property subject to forfeiture) broadly allows for forfeiture of “property that was used to facilitate the commission of an offense that is a violation of federal or state law; and . . . proceeds.” Disposition of forfeited property is governed by Utah Code Ann. § 24-4-115 (Disposition and allocation of forfeiture property), which states,

- (1) If a court finds that property is forfeited under this chapter, the court shall order the property forfeited to the agency.
- (2)
 - (a) If the property is not currency, the agency shall authorize a public or otherwise commercially reasonable sale of that property if the property is not required by law to be destroyed and is not harmful to the public.

- 1.7.1 Recommendation: Statutorily direct a percentage of financial penalties levied on trafficking and CSEC offenders into a victim services fund.

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- (d) The proceeds of the sale of forfeited property shall remain segregated from other property, equipment, or assets of the agency until transferred in accordance with this chapter.
- (3) Before transferring currency and the proceeds or revenue from the sale of the property in accordance with this chapter, the agency shall:
- (a) deduct the agency's direct costs, expense of reporting under Section 24-4-118, and expense of obtaining and maintaining the property pending a forfeiture proceeding; and
- (b) if the prosecuting agency that employed the prosecuting attorney has met the requirements of Subsection 24-4-119(3), pay the prosecuting attorney the legal costs associated with the litigation of the forfeiture proceeding, and up to 20% of the value of the forfeited property in attorney fees.
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- (5) The agency shall transfer any remaining currency, the proceeds, or revenue from the sale of the property to the commission and deposited into the [Criminal Forfeiture Restricted Account].

Under Utah Code Ann. § 24-4-116 (Criminal Forfeiture Restricted Account), funds deposited into the Criminal Forfeiture Restricted Account “shall be appropriated to the commission for implementing the program under Section 24-4-117.” Pursuant to Utah Code Ann. § 24-4-117(2) (State asset forfeiture grant program), “The program shall fund crime prevention, crime victim reparations, and law enforcement activities.” However, a percentage of a sex trafficking or CSEC offender’s forfeited assets is not directed into a victim services fund.



ISSUE 2: Identification of & Response to Victims

Policy Goal 2.1 The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

The definition of child sex trafficking victim includes all commercially sexually exploited children without requiring third party control. Specifically, Utah Code Ann. § 76-5-308.5(2), (3) (Human trafficking of a child – Penalties) expressly applies to buyers of commercial sex with minors based on the term “patronizes,”⁶ meaning a buyer can be charged regardless of whether a trafficker is involved or identified. As such, third party control is not required to establish the crime of child sex trafficking or, consequently, to identify a commercially sexually exploited child as a trafficking victim.

Policy Goal 2.2 State law provides policy guidance to facilitate access to services and assistance for trafficked foreign national children.

Utah law does not require the development of policy guidance to facilitate appropriate responses to foreign national child sex trafficking victims.

2.2.1 Recommendation: Enact a law requiring the development of policy guidance to facilitate access to services and assistance for trafficked foreign national children.

Policy Goal 2.3 State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.

Utah law does not require child welfare to screen all referred or system-involved children at risk of sex trafficking victimization; however, Utah Code Ann. § 62A-4a-206.5 (Children missing from state custody) requires child welfare to screen all children who were previously missing from care for experiences amounting to sex trafficking victimization. Utah Code Ann. § 62A-4a-206.5 states,

- (1) When the division receives information that a child in custody of the division is missing, has been abducted, or has run away, the division shall:
 - (a) within 24 hours after the time when the division has reason to believe that the information is accurate, notify the National Center on Missing and Exploitation Children; and
 -
- (2) When the division locates a child described in Subsection (1), the division shall:
 - (b) determine the child’s experiences while absent from care, including screening the child to determine if the child is a sex trafficking victim;
 - (c) to the extent possible, select a placement for the child that accommodates the child’s needs and takes into consideration the factors and experiences described in Subsections (2)(a) and (b); and
 -

⁶ See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Utah Code Ann. § 76-5-308.5.

Policy Goal 2.4 State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

Utah law does not require juvenile justice agencies to conduct trauma-informed CSEC screening of children and youth who are at risk of sex trafficking.

- 2.4.1 Recommendation: Enact a state law requiring juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation.

Policy Goal 2.5 State law prohibits the criminalization of minors under 18 for prostitution offenses.

Utah law prohibits the criminalization of minors for prostitution offenses; however, minors may still be subject to a punitive process for conduct in violation of Utah’s prostitution and sexual solicitation laws if transported to a juvenile receiving center.

Specifically, Utah Code Ann. § 76-10-1302(1) (Prostitution), Utah’s core prostitution statute, limits applicability to adults, stating,

- An individual except for a child under Section 76-10-1315 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) takes steps to arrange 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.

Further, minors are insulated from criminalization under Utah Code Ann. § 76-10-1313 (Sexual solicitation – Penalty), which provides,

- (1) An individual except for a child under Section 76-10-1315 is guilty of sexual solicitation when the individual:
 - (a) offers or agrees to commit any sexual activity with another individual for a fee, or the functional equivalent of fee.
 -
 -
- (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 subject to delinquency proceedings.

Utah Code Ann. § 76-10-1315(2), (4) (Safe harbor for children as victims of commercial sex or sexual solicitation) provides additional protections and responses for commercially sexually exploited minors, stating,

(2) Upon encountering a child engaged in commercial sex⁷ or sexual solicitation,⁸ 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;
- (c) bring the child to a juvenile receiving center, if available; and
- (d) contact the child's parent or guardian, if practicable.

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

Despite these protections, however, minors who are transported to a juvenile receiving center under Utah Code Ann. § 76-10-1315(2)(c) are subject to a punitive response akin to pre-detention diversion. Utah Code Ann. § 80-1-102(44) (Juvenile code definitions) defines "juvenile receiving center" as "a nonsecure, nonresidential program established by the Division of Juvenile Justice Services, or under contract with the Division of Juvenile Justice Services, that is responsible for minors taken into temporary custody under Section 80-6-201." Notably, custody under Utah Code Ann. § 80-6-201 (Minor taken into temporary custody by peace officer, private citizen, or probation officer – Grounds – Protective custody) is punitive in nature.⁹

⁷ Utah Code Ann. § 76-10-13(1)(a) (Safe harbor for children as victims in commercial sex or sexual solicitation) defines "child engaged in commercial sex as 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.

⁸ Utah Code Ann. § 76-10-13(1)(b) defines "child engaged in sexual solicitation" as, "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 . . ."

⁹ Pursuant to Utah Code Ann. § 80-6-201 (Minor taken into temporary custody by peace officer, private citizen, or probation officer – Grounds – Protective custody),

- (1) A minor may be taken into temporary custody by a peace officer without a court order, or a warrant under Section 80-6-202, if the peace officer has probable cause to believe that:
 - (a) the minor has committed an offense under municipal, state, or federal law;
 - (b) the minor seriously endangers the minor's own welfare or the welfare of others and taking the minor into temporary custody appears to be necessary for the protection of the minor or others;
 - (c) the minor has run away or escaped from the minor's parents, guardian, or custodian; or (d) the minor is:
 - (i) subject to the state's compulsory education law; and
 - (ii) subject to Section 53G-6-208, absent from school without legitimate or valid excuse.
- (2) A private citizen may take a minor into temporary custody if under the circumstances the private citizen could make a citizen's arrest under Section 77-7-3 if the minor was an adult.
- (3) A juvenile probation officer may take a minor into temporary custody:
 - (a) under the same circumstances as a peace officer in Subsection (1); or
 - (b) if the juvenile probation officer has a reasonable suspicion that the minor has violated the conditions of the minor's probation.
- (4)
 - (a) Nothing in this part shall be construed to prevent a peace officer or the Division of Child and Family Services from taking a minor into protective custody under Section 62A-4a-202.1 or 80-3-204.
 - (b) If a peace officer or the Division of Child and Family Services takes a minor into protective custody, the provisions of Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Title 62A, Chapter 4a, Child and Family Services, shall govern.

Consequently, while commercially sexually exploited children may be subject to punitive processes, including temporary custody in a juvenile receiving center, Utah law prohibits the prosecution of minors for prostitution offenses.

- 2.5.1 Recommendation: Amend state law to clearly prohibit the use detention in response to minors engaged in commercial sex.

Policy Goal 2.6 State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.

Utah law does not prohibit the criminalization of child sex trafficking victims for status offenses nor does it prohibit charging victims with misdemeanors or non-violent felonies committed as a result of their trafficking victimization.

- 2.6.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization.

Policy Goal 2.7 State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Utah law does not prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

- 2.7.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Policy Goal 2.8 State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Utah law does not provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

- 2.8.1 Recommendation: Enact a law that provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Policy Goal 2.9 Juvenile court jurisdiction aligns with international human rights standards.

Utah law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While Utah law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute does not establish a minimum age for jurisdictional purposes and requires direct file for juvenile cases involving older minors charged with certain felonies. However, in making discretionary transfer determinations, the juvenile court is required to consider the impact of trauma on the accused child.

| | Minimum Age for Juvenile Court Jurisdiction | Maximum Age for Charging a Minor in Juvenile Court | Automatic Transfers or Direct File | Discretionary Transfers | Requirement for Court to Consider Trauma or Past Victimization |
|----------------------------|---|---|---|---|---|
| Summary | None. “Child” is defined as, “an individual who is under 18 years old.” | 17 | Yes. Minors 16+ years of age charged with aggravated murder or murder. | Yes. Minors: (1) 16+ years of age charged with a felony violation of aggravated assault, attempted aggravated murder, attempted murder, aggravated kidnapping, aggravated sexual assault, aggravated arson, aggravated burglary, aggravated robbery, felony discharged or a firearm or any other felony offense involving the use of a dangerous weapon; (2) 14 or 15 years of age charged with aggravated murder or attempted aggravated murder or murder or attempted murder. | Yes. The juvenile court is required to consider, “the minor’s mental, physical, educational, trauma, and social history” |
| Relevant Statute(s) | Utah Code Ann. § 80-1-102(7) (Juvenile code definitions) | Utah Code Ann. § 80-1-102(7) (Juvenile code definitions); Utah Code Ann. § 78A-6-103(1) (Original jurisdiction of the juvenile court – Magistrate functions – Findings – Transfer of a case from another court) | Utah Code Ann. § 80-6-502(1) (Criminal information for a minor in district court) | Utah Code Ann. § 80-6-503(1)(a)–(b) (Criminal information for a minor in juvenile court – Extending juvenile court jurisdiction) | Utah Code Ann. § 80-6-504(3) (Preliminary hearing – Grounds for transfer – Detention of a minor bound over to the district court) |

Consequently, some minors may still be subjected to age-inappropriate juvenile court responses due to state laws that: (1) fail to establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; and (2) allow some juvenile cases to be subject to direct file.

- 2.9.1 Recommendation: Enact comprehensive state laws requiring age-appropriate juvenile court responses for all children accused of engaging in juvenile or criminal conduct.

Policy Goal 2.10 State law defines child abuse to include child sex trafficking for purposes of accessing child welfare services.

Utah’s Juvenile Court Act of 1996¹⁰ expressly defines “abuse” to include child sex trafficking. Specifically, “abuse” is defined under Utah Code Ann. § 80-1-102(1)(a)(i)(E) (Definitions) to include “human trafficking of a child in violation of Section 76-5-308.5”

EXTRA CREDIT



Child labor trafficking is included in the definition of “abuse” under Utah Code Ann. § 80-1-102(1)(a)(i)(E), which expressly includes victims of a violation of Utah Code Ann. § 76-5-308.5 (Human trafficking of a child – Penalties).

Policy Goal 2.11 State law clearly defines child welfare’s role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.

Although Utah’s child protective statutes refer to a child’s parent, guardian, or custodian in the context of dependency,¹¹ relevant jurisdictional statutes appear to provide the Division with broad authority to provide services to minor victims of sex trafficking without requiring a finding of dependency; however, no alternative process for responding to these cases is statutorily provided. Pursuant to Utah Code Ann. § 62A-4a-105(1)(b)(ix) (Division responsibilities),

The [Division of Child and Family Services] shall:

.....

(b) provide the following services:

.....

(ix) services for minors who are victims of human trafficking or human smuggling as described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual solicitation as defined in Section 76-10-1302 and 76-10-1313

Accordingly, Utah law clearly provides access to child welfare services for child sex trafficking victims without hinging access to services on parent or caregiver fault, but it does not outline a child sex trafficking-specific protocol for responding to non-familial child sex trafficking cases.

¹⁰ Pursuant to Utah Code Ann. § 62A-4a-101(1) (Definitions), “Abuse” means the same as that term is defined in Section 80-1-102 [Definitions].”

¹¹ Utah Code Ann. § 80-1-102(17) (Juvenile code definitions) provides that a “dependent child” includes “a child who is homeless or without proper care through no fault of the child’s parent, guardian, or custodian.”

- 2.11.1 Recommendation: Strengthen existing law to statutorily outline a child sex trafficking-specific protocol for child welfare to respond to non-familial child sex trafficking cases without hinging on caregiver fault.



ISSUE 3: Continuum of Care

Policy Goal 3.1 State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

Utah law provides child sex trafficking victims with access to specialized services through a non-punitive system. Under Utah Code Ann. § 76-10-1315(2)–(4) (Safe harbor for children as victims in commercial sex or sexual solicitation), when law enforcement encounters a commercially sexually exploited child, an investigation must be conducted, and the Division of Child and Family Services must be contacted with a referral. Utah Code Ann. § 76-10-1315(2)–(4) states,

- (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 [Human trafficking – Human smuggling] and 76-5-308.5 [Human trafficking of a child – penalties];
 - (b) refer the child to the division;
 - (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 solicitation under Section 76-10-1313 [Sexual solicitation–penalty].

Similarly, Utah Code Ann. § 76-10-1313(6) (Sexual solicitation—penalty) states,

- (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.

Under Utah Code Ann. § 62A-4a-105(1)(b)(ix) (Division responsibilities), the Division is tasked with providing the following services:

[S]ervices for minors who are victims of human trafficking or human smuggling as described in Sections 76-5-308 [Human trafficking–human smuggling] through 76-5-310 [Aggravated human trafficking and aggravated human smuggling–penalties] or who have engaged in prostitution or sexual solicitation as defined in Section 76-10-1302 and 76-10-1313

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Child labor trafficking victims have access to specialized services through the Division of Child and Family Services under Utah Code Ann. § 62A-4a-105(1)(b)(ix) (Division responsibilities), which tasks the Division with providing services to victims of both sex and labor trafficking.

Policy Goal 3.2 State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.

Although child sex trafficking victims could receive a multi-disciplinary team (MDT) response through an existing child abuse MDT, Utah law does not require an MDT response specific to child sex trafficking cases. Pursuant to Utah Code Ann. § 67-5b-102 (Children’s justice center – Requirements of center – Purposes of center), the Children’s Justice Center will provide a cross-discipline response to child abuse victims,

- (1)
 - (a) There is established the Children’s Justice Center Program to provide a comprehensive, multidisciplinary, intergovernmental response to child abuse victims in a facility known as a Children’s Justice Center.
 - (b) The attorney general shall administer the program.
 - (c) The attorney general shall:
 - (i) allocate the funds appropriated by a line item pursuant to Section 67-5b-103;
 - (ii) administer applications for state and federal grants and subgrants;
 - (iii) maintain an advisory board that is associated with the program to comply with requirements of grants that are associated with the program;
 - (iv) assist in the development of new centers;
 - (v) coordinate services between centers;
 - (vi) contract with counties and other entities for the provision of services;
 - (vii)
 - (A) provide training, technical assistance, and evaluation to centers; and
 - (B) ensure that any training described in Subsection (1)(c)(vii)(A) complies with Title 63G, Chapter 22, State Training and Certification Requirements; and
 - (viii) provide other services to comply with established minimum practice standards as required to maintain the state’s and centers’ eligibility for grants and subgrants.
-
- (3) The attorney general and each center shall:
 - (a) coordinate the activities of the public agencies involved in the investigation and prosecution of child abuse cases and the delivery of services to child abuse victims and child abuse victims’ families;
 - (b) provide a neutral, child-friendly program, where interviews are conducted and services are provided to facilitate the effective and appropriate disposition of child abuse cases in juvenile, civil, and criminal court proceedings;
 - (c) facilitate a process for interviews of child abuse victims to be conducted in a professional and neutral manner;
 - (d) obtain reliable and admissible information that can be used effectively in child abuse cases in the state;
 - (e) maintain a multidisciplinary team that includes representatives of public agencies involved in the investigation and prosecution of child abuse cases and in the delivery of services to child abuse victims and child abuse victims’ families;

- (f) hold regularly scheduled case reviews with the multidisciplinary team;
 - (g) coordinate and track:
 - (i) investigation of the alleged offense; and
 - (ii) preparation of prosecution;
 - (h) maintain a working protocol that addresses the center’s procedures for conducting forensic interviews and case reviews, and for ensuring a child abuse victim’s access to medical and mental health services;
 - (i) maintain a system to track the status of cases and the provision of services to child abuse victims and child abuse victims’ families;
 - (j) provide training for professionals involved in the investigation and prosecution of child abuse cases and in the provision of related treatment and services;
 - (k) enhance community understanding of child abuse cases; and
 - (l) provide as many services as possible that are required for the thorough and effective investigation of child abuse cases.
- (4) To assist a center in fulfilling the requirements and statewide purposes as provided in Subsection (3), each center may obtain access to any relevant juvenile court legal records and adult court legal records, unless sealed by the court.

Further, Utah Code Ann. § 62A-4a-202.8(1) (Child protection team meeting – Timing) allows for the assembly of a child protection team, stating,

A child protection team¹² may assemble for a particular case when:

- (a) the case demonstrates:
 - (i) the likelihood of severe child abuse or neglect; or
 - (ii) a high risk of repetition as evidenced by previous involvements with law enforcement or the division; and
- (b) the child protection team is assembled for the purpose of information sharing and identification of resources, services, or actions that support the child and the child’s family.

3.2.1 Recommendation: Enact legislation requiring a multi-disciplinary team response specific to child sex trafficking victims.

¹² Utah Code Ann. § 62A-4a-101(4) (Definitions) defines “child protection team” as follows:

“Child protection team” means a team consisting of:

- (a) the caseworker assigned to the case;
- (b) if applicable, the caseworker who made the decision to remove the child;
- (c) a representative of the school or school district where the child attends school;
- (d) if applicable, the law enforcement officer who removed the child from the home;
- (e) a representative of the appropriate Children’s Justice Center, if one is established within the county where the child resides;
- (f) if appropriate, and known to the division, a therapist or counselor who is familiar with the child’s circumstances;
- (g) if appropriate, a representative of law enforcement selected by the chief of police or sheriff in the city or county where the child resides; and
- (h) any other individual determined appropriate and necessary by the team coordinator and chair.

Policy Goal 3.3 State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

Utah law does not provide access to specialized services for identified sex trafficked children and youth in the juvenile justice system.

- 3.3.1 Recommendation: Enact legislation requiring the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

Policy Goal 3.4 State law extends foster care services to older foster youth.

Utah law extends foster care services to youth under 21 years of age. However, these services are not extended to youth under 23 years of age as permitted under federal law.¹³ Specifically, Utah Code Ann. § 62A-4a-101(21) (Definitions) defines “minor” to have the meaning ascribed to it under Utah Code Ann. § 80-1-102(47) (Juvenile code definitions), which states,

“Minor” means . . .

- (a) a child; or
- (b) an individual:
 - (i) (A) who is at least 18 years old and younger than 21 years old; and
 - (B) for whom the Division of Child and Family Services has been specifically ordered by the juvenile court to provide services because the individual was an abused, neglected, or dependent child or because the individual was adjudicated for an offense; or

. . . .

Additionally, Utah Code Ann. § 62A-4a-106 (Services provided by division) provides access to extended services, including out-of-home placements and protective services for minors.

- 3.4.1 Recommendation: Strengthen existing law to better support transition age youth by extending transitional foster care services to youth under 23 years of age.

Policy Goal 3.5 State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

The Utah state legislature did not appropriate funds to support the development and provision of specialized, community-based services and care to child and youth survivors.

- 3.5.1 Recommendation: Appropriate state funds to support the development of and access to specialized, community-based services to child and youth survivors of sex trafficking.

¹³ For more information, see Shared Hope Int'l, *Issue Brief 3.4: Continuum of Care*, https://sharedhope.org/wp-content/uploads/2020/12/SH_Issue-Brief-3.4_2020.pdf (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).

Policy Goal 3.6 State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.

The Utah state legislature did not appropriate funds to support child-serving agencies with developing and providing specialized services and ensuring a continuum of care for child and youth survivors who interact or are involved with state systems.

3.6.1 Recommendation: Appropriate state funds to support child-serving agencies in the development of and access to specialized services to child and youth survivors of sex trafficking.



ISSUE 4: Access to Justice for Trafficking Survivors

Policy Goal 4.1 State law allows trafficking victims to seek emergency civil orders of protection.

Utah law allows trafficking victims to seek ex parte civil orders of protection against their exploiters. Pursuant to Utah Code Ann. § 78B-7-202(1)(a) (Abuse or danger of abuse – Child protective orders – Ex parte child protective orders – Guardian ad litem – Referral to division),

Any interested person may file a petition for a protective order:

- (i) on behalf of a child who is being abused or is in imminent danger of being abused by any individual;
- or
- (ii) on behalf of a child who has been abused by an individual who is not the child’s parent, stepparent, guardian, or custodian.

Utah Code Ann. § 78B-7-201(1) (Definitions) defines “abuse” as follows:

- (a) physical abuse;
- (b) sexual abuse;
- (c) any sexual offense described in Title 76, Chapter 5b, Part 2, Sexual Exploitation; or
- (d) human trafficking of a child for sexual exploitation under Section 76-5-308.5.

Accordingly, civil orders of protection are available to victims of child sex trafficking.¹⁴ Further, Utah Code Ann. § 78B-7-202(3) allows those orders to be granted on an ex parte basis, stating,

If it appears from a petition for a protective order filed under Subsection (1)(a)(i) that the child is being abused or is in imminent danger of being abused, or it appears from a petition for a protective order filed under Subsection (1)(a)(ii) that the child has been abused, the court may:

- (a) without notice, immediately issue an ex parte child protective order¹⁵ against the respondent if necessary to protect the child; or

¹⁴ Notably, Utah Code Ann. § 78B-7-503(1) (Sexual violence – Sexual violence protective orders) provides a similar protection to youth, stating,

- (a) An individual may seek a protective order under this part if the individual has been subjected to sexual violence and is neither a cohabitant nor a dating partner of the respondent.
- (b) An individual may not seek a protective order on behalf of a child under this part.

Utah Code Ann § 78B-7-502(3) (Definitions) defines “sexual violence” as follows:

[T]he commission or the attempt to commit:

- (a) any sexual offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, or Title 76, Chapter 5b, Part 2, Sexual Exploitation;
- (b) human trafficking for sexual exploitation under Section 76-5-308; or
- (c) aggravated human trafficking for forced sexual exploitation under Section 76-5-310.

¹⁵ Utah Code Ann. § 78B-7-201(4) defines “ex parte child protective order” as “an order issued without notice to the respondent under this part.”

(b) upon notice to the respondent, issue a child protective order after a hearing in accordance with Subsection 78B-7-203(5) [Hearings].

Policy Goal 4.2 Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking and commercial sexual exploitation of children (CSEC) from accessing compensation.

Although Utah's crime victims' compensation laws define "victim" broadly enough to include victims of child sex trafficking and CSEC, ineligibility factors may prevent a commercially sexually exploited child from accessing an award.

For purposes of accessing crime victims' compensation, Utah Code Ann. § 63M-7-502(37)(a)(i) (Definitions) defines "victim" as "an individual who suffers bodily or psychological injury or death as a direct result of . . . criminally injurious conduct . . ." "Criminally injurious conduct" is defined under Utah Code Ann. § 63M-7-502(7)(a) to include the following:

[C]onduct that:

- (i) is or would be subject to prosecution in this state under Section 76-1-201 [Jurisdiction of offenses];¹⁶
- (ii) occurs or is attempted;
- (iii) causes, or poses a substantial threat of causing, bodily injury or death;
- (iv) is punishable by fine, imprisonment, or death if the individual engaging in the conduct possessed the capacity to commit the conduct; and
- (v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water craft . . .

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to Utah Code Ann. § 63M-7-509(1) (Grounds for eligibility),

A victim is eligible for a reparations award under this part if:

-
- (d) the criminally injurious conduct is reported to a law enforcement officer, in the law enforcement officer's capacity as a law enforcement officer, or another federal or state investigative agency;
- (e) the claimant or victim cooperates with the appropriate law enforcement agencies and prosecuting attorneys in efforts to apprehend or convict the perpetrator of the alleged offense

Further, Utah Code Ann. § 63M-7-510(1)(c), (f)–(g) (Ineligible individuals – Fraudulent reparations claims – Penalties) provides,

The following individuals are not eligible to receive a reparations award:

. . . .

¹⁶ Utah Code Ann. § 76-1-201(1) (Jurisdiction of offenses) applies broadly to criminal offenses, stating,

A person is subject to prosecution in this state for an offense which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if:

- (a) the offense is committed either wholly or partly within the state;
- (b) the conduct outside the state constitutes an attempt to commit an offense within the state;
- (c) the conduct outside the state constitutes a conspiracy to commit an offense within the state and an act in furtherance of the conspiracy occurs in the state; or
- (d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction.

- (c) an accomplice of the offender;
-
- (f) a convicted offender serving a sentence of imprisonment in any prison or jail or residing in any other correctional facility;
- (g) an individual who is on probation or parole if the circumstances surrounding the offense of which the individual is a victim is a violation of the individual's probation or parole;

Lastly, Utah Code Ann. § 63M-7-512(1) (Reparations reduction) states,

Reparations otherwise payable to a claimant may be reduced or denied as follows:

- (a) the economic loss upon which the claim is based has been or could be recouped from other persons, including collateral sources;
- (b) the reparations officer considers the reparations claim unreasonable because of the misconduct of the claimant; or
- (c) the victim did not use a facility or health care provider which would be covered by a collateral source.

- 4.2.1 Recommendation: Statutorily exempt victims of child sex trafficking and CSEC from ineligibility factors for crime victims' compensation.

Policy Goal 4.3 Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Utah law allows sex trafficked children and youth to vacate delinquency adjudications and criminal convictions but only for certain offense arising from trafficking victimization. Utah Code Ann. § 80-6-1002 (Vacatur of adjudications) applies to delinquency adjudications arising from trafficking victimization. It states,

- (1)
 - (a) An individual who has been adjudicated under this chapter [Juvenile justice] may petition the juvenile court for vacatur of the individual's juvenile court records and any related records in the custody of an agency if the record relates to:
 - (i) an adjudication under Section 76-10-1302 [Prostitution], 76-10-1304 [Aiding prostitution], or 76-10-1313 [Sexual solicitation – Penalty]; or
 - (ii) an adjudication that was based on an offense that the petitioner engaged in while subject to force, fraud, or coercion, as defined in Section 76-5-308 [Human trafficking – Human smuggling].
 -
 -
 - (3)
 - (b)
 - (i) In deciding whether to grant a petition for vacatur, the juvenile court shall consider whether the petitioner acted subject to force, fraud, or coercion, as defined in Section 76-5-308, at the time of the conduct giving rise to the adjudication.
 - (ii)
 - (A) If the juvenile court finds by a preponderance of the evidence that the petitioner was subject to force, fraud, or coercion, as defined in Section 76-5-308 at the time of the conduct giving rise to the adjudication, the juvenile court shall grant vacatur.
 - (B) If the court does not find sufficient evidence, the juvenile court shall deny vacatur.
 - (iii) If the petition is for vacatur of any adjudication under Section 76-10-1302, 76-10-1304, or 76-10-1313, the juvenile court shall presumptively grant vacatur unless the petitioner acted as a purchaser of any sexual activity.

(c) If vacatur is granted, the juvenile court shall order sealed all of the petitioner’s records under the control of the juvenile court and any of the petitioner’s records under the control of any other agency or official pertaining to the incident identified in the petition

.....
(5)

(a) Upon the entry of vacatur, the proceedings in the incident identified in the petition shall be considered never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter.

.....
(6)

The juvenile court may not vacate a juvenile court record if the record contains an adjudication of:

- (a) Section 76-5-202, aggravated murder; or
- (b) Section 76-5-203, murder.

Notably, Utah Code Ann. § 80-6-1002(1)(a) makes vacatur available for any crime except murder or aggravated murder. However, child sex trafficking victims must prove they engaged in the offense as a result of force, fraud, or coercion, which may prevent some survivors from obtaining this form of relief.

Utah Code Ann. § 78B-9-104(1)(g) (Grounds for relief – Retroactivity of rule) applies to criminal convictions arising from trafficking victimization. It states,

Unless precluded by Section 78B-9-106 [Preclusion of relief – Exception]¹⁷ or 78B-9-107 [Statute of limitations for postconviction relief],¹⁸ an individual who has been convicted and sentenced for a criminal offense may file an action in the district court of original jurisdiction for postconviction relief to vacate or modify the conviction or sentence upon the following grounds:

.....

¹⁷ Pursuant to Utah Code Ann. § 78B-9-106(1), (3) (Preclusion of relief – Exception)

- (1) A petitioner is not eligible for relief under this chapter upon any ground that:
 - (a) may still be raised on direct appeal or by a post-trial motion;
 - (b) was raised or addressed in the trial court, at trial, or on appeal;
 - (c) could have been but was not raised in the trial court, at trial, or on appeal;
 - (d) was raised or addressed in any previous request for post-conviction relief or could have been, but was not, raised in a previous request for postconviction relief; or
 - (e) is barred by the limitation period established in Section 78B-9-107.

.....
(3)

.....
(b) Notwithstanding Subsections (1)(c) and (1)(d), a petitioner may be eligible for relief on a basis that the ground could have been but was not raised in the trial court, at trial, on appeal, or in a previous request for postconviction relief, if the failure to raise that ground was due to force, fraud, or coercion as defined in Section 76-5-308.

¹⁸ Pursuant to Utah Code Ann. § 78B-9-107(1), (3)(a) (Statute of limitations for postconviction relief)

- (1) A petitioner is entitled to relief only if the petition is filed within one year after the day on which the cause of action has accrued.

.....
(3)

(a) The limitations period is tolled for any period during which the petitioner was prevented from filing a petition due to state action in violation of the United States Constitution, due to physical or mental incapacity, or for claims arising under Subsection 78B-9-104(1)(g), due to force, fraud, or coercion as defined in Section 76-5-308.

(g) the petitioner committed any of the following offenses while subject to force, fraud, or coercion, as defined in Section 76-5-308:

- (i) Section 58-37-8, possession of a controlled substance;
- (ii) Section 76-10-1304, aiding prostitution;
- (iii) Section 76-6-206, criminal trespass;
- (iv) Section 76-6-413, theft;
- (v) Section 76-6-502, possession of forged writing or device for writing;
- (vi) Sections 76-6-602 through 76-6-608, retail theft;
- (vii) Subsection 76-6-1105(2)(a)(i)(A), unlawful possession of another's identification document;
- (viii) Section 76-9-702, lewdness;
- (ix) Section 76-10-1302, prostitution; or
- (x) Section 76-10-1313, sexual solicitation.

Under Utah Code Ann. § 78B-9-108(2) (Effect of granting relief – Notice), “If the court grants the petitioner’s request for relief under Subsection 78B-9-104(1)(g), the court shall: (a) vacate the original conviction and sentence; and (b) order the petitioner’s records expunged pursuant to Section 77-40-108.5.” However, relief is only available for enumerated offenses, which fails to recognize the array of crimes trafficking victims may be induced to commit and leaves many survivors without any avenue for relief.

- 4.3.1 Recommendation: Strengthen existing law by allowing sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Policy Goal 4.4 State law mandates restitution for child sex trafficking and commercial sexual exploitation of children (CSEC) offenses.

Utah law requires an offender convicted of a child sex trafficking or CSEC offense to pay restitution. Pursuant to Utah Code Ann. § 77-38b-205(1)(a) (Order for restitution),

- (i) If a defendant is convicted, as defined in Section 76-3-201 [Sentences or combination of sentences allowed – Restitution and other costs – Civil penalties], the court shall order a defendant, as part of the sentence imposed under Section 76-3-201, to pay restitution to all victims:¹⁹
 - (A) in accordance with the terms of any plea agreement in the case; or

¹⁹ Utah Code Ann. § 77-38b-102(15) (Definitions) defines “victim” as follows:

- (a) “Victims” means any person who has suffered pecuniary damages that are proximately caused by the criminal conduct of the defendant.
- (b) “Victim” includes:
 - (i) the Utah Office of Victims of Crime if the Utah Office for Victims of Crime makes a payment to a victim under Section 63M-7-519 [Assignment of recovery – Reimbursement];
 - (ii) the estate of a deceased victim; and
 - (iii) a parent, spouse, or sibling or a victim.
- (c) “Victim” does not include a codefendant or accomplice.

Problematically, this definition could prevent child sex trafficking victims from receiving restitution to the extent they are seen as an accomplice of their exploiter for acts committed pursuant to their victimization.

- (B) for the entire amount of pecuniary damages²⁰ that are proximately caused to each victim by the criminal conduct²¹ of the defendant.
- (ii) In determining the amount of pecuniary damages under Subsection (1)(a)(i)(B), the court shall consider all relevant facts to establish an amount that fully compensates a victim for all pecuniary damages proximately caused by the criminal conduct of the defendant.
- (iii) The court shall enter the determination of the amount of restitution under Subsection (1)(a)(ii) as a finding on the record.

EXTRA CREDIT



Utah law mandates restitution for victims of child labor trafficking under Utah Code Ann. § 77-38b-205, which applies broadly to any offense.

Policy Goal 4.5 State law provides child sex trafficking victims with a trafficking-specific civil remedy.

Utah law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Utah Code Ann. § 77-38-15(1), (2) (Civil action against human traffickers and human smugglers) states,

- (1) A victim of a person that commits the offense of human trafficking or human smuggling under Section 76-5-308, human trafficking of a child under Section 76-5-308.5, aggravated human trafficking or aggravated human smuggling under Section 76-5-310, or benefitting from human trafficking under Subsection 76-5-309(4) may bring a civil action against that person.
- (2)
- (a) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief.
 - (b) The court may award treble damages on proof of actual damages if the court finds that the person's acts were willful and malicious.

²⁰ Utah Code Ann. § 77-38b-102(9) defines “pecuniary damages” as follows:

- (a) “Pecuniary damages” means all demonstrable economic injury, losses, and expenses regardless of whether the economic injury, losses, and expenses have yet been incurred.
- (b) “Pecuniary damages” does not include punitive damages or pain and suffering damages.

²¹ Utah Code Ann. § 77-38b-102(2) defines “criminal conduct” as follows:

- (a) any misdemeanor or felony offense of which the defendant is convicted; or
- (b) any other criminal behavior for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal behavior.

EXTRA CREDIT



Utah law provides sex trafficked youth with a trafficking-specific civil remedy under Utah Code Ann. § 77-38-15(1), which expressly includes victims of sex trafficking under Utah Code Ann. § 76-5-308 (Human trafficking – Human smuggling).



Utah law provides child labor trafficking victims with a trafficking-specific civil remedy under Utah Code Ann. § 77-38-15(1), which expressly includes victims of Utah Code Ann. § 76-5-308.5 (Human trafficking of a child – Penalties), which criminalizes both sex and labor trafficking of children.

Policy Goal 4.6 Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

Prosecutions for child sex trafficking and certain CSEC offenses may commence at any time; however, the statute of limitation for trafficking-specific civil actions is only lengthened, not eliminated. Pursuant to Utah Code Ann. § 76-1-301(2) (Offenses for which prosecution may be commenced at any time),

Notwithstanding any other provisions of this code, prosecution for the following offenses may be commenced at any time:

....

- (n) sexual abuse of a child;
- (o) aggravated sexual abuse of a child;

....

- (r) aggravated human trafficking or aggravated human smuggling in violation of Section 76-5-310;
- (s) aggravated exploitation of prostitution involving a child, under Section 76-10-1306; or
- (t) human trafficking of a child, under Section 76-5-308.5.

In contrast, Utah Code Ann. § 76-1-302(1)(a), (b) (Time limitations for prosecution of offense – Provisions if DNA evidence would identify the defendant – Commencement of prosecution) establishes a general 4-year statute of limitation for felony prosecutions and a general 2-year statute of limitation for misdemeanor prosecutions.

Regarding civil actions, Utah Code Ann. § 77-38-15(4), (5) (Civil action against human traffickers and human smugglers) provides,

- (4) An action under this section shall be commenced no later than 10 years after the later of:
 - (a) the day on which the victim was freed from the human trafficking or human smuggling situation;
 - (b) the day on which the victim attains 18 years old; or
 - (c) if the victim was unable to bring an action due to a disability, the day on which the victim's disability ends.
- (5) The time period described in Subsection (4) is tolled during a period of time when the victim fails to bring an action due to the person:

- (a) inducing the victim to delay filing the action;
- (b) preventing the victim from filing the action; or
- (c) threatening and causing duress upon the victim in order to prevent the victim from filing the action.

4.6.1 Recommendation: Eliminate criminal and civil statutes of limitation for all cases involving child sex trafficking and CSEC.



ISSUE 5: Tools for a Victim-Centered Criminal Justice Response

Policy Goal 5.1 State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

Utah law allows previously recorded out-of-court statements made by some commercially sexually exploited children under 14 years of age to be admitted into evidence in lieu of, or for the purpose of corroborating, the child’s testimony. Specifically, Utah R. Crim. P. 15.5(a) (Out of court statement and testimony of child victims or child witnesses of sexual or physical abuse – Conditions of admissibility) states,

Previously recorded statements. – In any case concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or other witness younger than 14 years of age which was recorded prior to the filing of an information or indictment is, upon motion and for good cause shown, admissible as evidence in any court proceeding regarding the offense if all of the following conditions are met:

- (1) the child is available to testify and to be cross-examined at trial, either in person or as provided by law, or the child is unavailable to testify at trial, but the defendant had a previous opportunity to cross-examine the child concerning the recorded statement, such that the defendant's rights of confrontation are not violated;
- (2) no attorney for either party is in the child's presence when the statement is recorded;
- (3) the recording is visual and aural and is recorded on film, videotape or other electronic means;
- (4) the recording is accurate and has not been altered;
- (5) each voice in the recording is identified;
- (6) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;
- (7) the defendant and the defendant's attorney are provided an opportunity to view the recording before it is shown to the court or jury; and
- (8) the court views the recording before it is shown to the jury and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence.

Although “sexual offense” is not defined for purposes of Utah R. Crim. P. 15.5, the “Sexual Offense” chapter includes violations of Utah Code Ann. § 76-5-404.1 (Sexual abuse of a child – Aggravated sexual abuse of a child), one of Utah’s CSEC offenses. Accordingly, children under 14 years of age who are victims of Utah Code Ann. § 76-5-404.1 are protected under the hearsay exception. However, victims of child sex trafficking and Utah’s other CSEC offenses are not protected, nor are older minors. Further, this hearsay exception excludes children whose statements are not recorded.

- 5.1.1 Recommendation: Strengthen existing hearsay protections to expressly apply in child sex trafficking and CSEC cases.

Policy Goal 5.2 State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.

Utah law allows a victim who is under 14 years of age to testify by an alternative method during the prosecution of a specified offense; however, this protection does not extend to victims of child sex trafficking or most CSEC

offenses. Specifically, Utah R. Crim. P. 15.5 (Out of court statement and testimony of child victims or child witnesses of sexual or physical abuse – Conditions of admissibility) states,

(b) Remote transmission of testimony. – In a criminal case concerning a charge of child abuse or of a sexual offense against a child, the court, upon motion of a party and for good cause shown, may order that the testimony of any victim or other witness younger than 14 years of age be taken in a room other than the court room, and be televised by closed circuit equipment to be viewed by the jury in the court room. All of the following conditions shall be observed:

(1) Only the judge, attorneys for each party and the testifying child (if any), persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be in the room during the child's testimony. A defendant who consents to be hidden from the child's view may also be present unless the court determines that the child will suffer serious emotional or mental strain if required to testify in the defendant's presence, or that the child's testimony will be inherently unreliable if required to testify in the defendant's presence .

...

(2) Only the judge and an attorney for each party may question the child.

(3) As much as possible, persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(4) If the defendant is present with the child during the child's testimony, the court may order that persons operating the closed circuit equipment film both the child and the defendant during the child's testimony, so that the jury may view both the child and the defendant, if that may be arranged without violating other requirements of Subsection (b)(1).

(c) Remote recording of testimony. – In any criminal case concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of a party and for good cause shown, that the testimony of any victim or other witness younger than 14 years of age be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the charges if the provisions of Subsection (b) are observed, in addition to the following provisions:

(1) the recording is visual and aural and recorded on film, videotape or by other electronic means;

(2) the recording is accurate and is not altered;

(3) each voice on the recording is identified; and

(4) each party is given an opportunity to view the recording before it is shown in the courtroom.

(d) Presence of child when recording is used. – If the court orders that the testimony of a child be taken under Subsection (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

Although “sexual offense” is not defined for purposes of Utah R. Crim. P. 15.5, the “Sexual Offense” chapter includes violations of Utah Code Ann. § 76-5-404.1 (Sexual abuse of a child – Aggravated sexual abuse of a child), one of Utah’s CSEC offenses. However, victims of child sex trafficking and Utah’s other CSEC offenses are not protected, nor are older minors, thereby increasing their risk of re-traumatization from testifying.

- 5.2.1 Recommendation: Strengthen existing protections to allow all commercially sexually exploited children to testify by an alternative method regardless of the child’s age and the offense charged.

Policy Goal 5.3 Child sex trafficking victims have access to victim protections in the criminal justice system.

| | Child sex trafficking victims have the right to a victim advocate | Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom | Child sex trafficking victims' identifying information is protected from disclosure in court records |
|----------------------------|---|---|--|
| Summary | Not statutorily required. | Not statutorily required. | Not statutorily required. |
| Relevant Statute(s) | None. | None. | None. |

5.3.1 Recommendation: Statutorily ensure that child sex trafficking victims have the right to a victim advocate, courtroom supports are provided when they are testifying against their exploiter, and their identifying information is kept confidential in court records.

Policy Goal 5.4 State law provides for privileged communications between caseworkers and child sex trafficking victims.

Utah law provides for a child sex trafficking-specific caseworker privilege that protects a child sex trafficking victim's communications with their caseworker from being disclosed. Under Utah Code Ann. § 78B-1-137(6)(b) (Witnesses – Privileged communications),

A victim advocate²² as defined in Section 77-38-403 [Definitions] may not, without the written consent of the victim, or the victim's guardian or conservator if the guardian or conservator is not the accused, be examined in a civil or criminal proceeding as to a confidential communication,²³ as defined in Section 77-38-403, unless the victim advocate is a criminal justice system victim advocate, as defined in Section 77-38-403, and is examined in camera by a court to determine whether the confidential communication is privileged.

Utah Code Ann. § 77-38-403(9) (Definitions) defines "victim" to include "(a) a victim of a crime as defined in Section 77-38-2; (b) an individual who is a victim of domestic violence . . . ; or (c) an individual who is a victim of dating violence" Importantly, the definition of "victim of a crime" under Utah Code Ann. § 77-38-2(9)(a) (Definitions) is not limited to victims of certain crimes; Utah Code Ann. § 77-38-2(9)(a) states,

"Victim of a crime" means any natural person against whom the charged crime or conduct is alleged to have been perpetrated or attempted by the defendant or minor personally or as a party to the offense or conduct or, in the discretion of the court, against whom a related crime or act is alleged to have been

²² Pursuant to Utah Code Ann. § 77-38-403(10) (Definitions),

- (a) "Victim advocate" means:
 - (i) a criminal justice system victim advocate;
 - (ii) a nongovernment organization victim advocate; or
 - (iii) an individual who is employed or authorized to volunteer by a public or private entity and is designated by the Utah Office for Victims of Crime as having the specific purpose of providing advocacy services to or for the clients of the public or private entity.
- (b) "Victim advocate" does not include an employee of the Utah Office for Victims of Crime.

²³ Utah Code Ann. § 77-38-403(3) defines "confidential communication" as "a communication that is intended to be confidential between a victim and a victim advocate for the purpose of obtaining advocacy services."

perpetrated or attempted, unless the natural person is the accused or appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of this state.

Based on this broad definition of “victim of crime,” the protection provided for under Utah Code Ann. § 78B-1-137(6)(b) would apply to confidential communications made between a child sex trafficking victim and their victim advocate.

EXTRA CREDIT



Utah law prevents disclosure of confidential communications made between a “victim of crime,” including a sex trafficking victim, and their victim advocate under Utah Code Ann. § 78B-1-137(6)(b) regardless of the victim’s age.



Utah law prevents disclosure of confidential communications made between a child labor trafficking victim and their caseworker under Utah Code Ann. § 78-1-137(6)(b), which applies broadly to communications made between a “victim of crime,” including a child labor trafficking victim, and their victim advocate.



ISSUE 6: Prevention & Training

Policy Goal 6.1 State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

Although Utah law requires the Division of Child and Family Services to provide training for staff on the delivery of offered services, training is not specifically mandated on identification and response to child sex trafficking. Such training should, however, be authorized since the training covers offered services and the Division offers specialized services to commercially sexually exploited children. Pursuant to Utah Code Ann. § 62A-4a-105(1)(b)(ix), (x) (Division Responsibilities),

The [Division of Child and Family Services] shall:

.....

(b) provide the following services:

.....

(ix) services for minors who are victims of human trafficking or human smuggling as described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual solicitation as defined in Section 76-10-1302 and 76-10-1313; and

(x) training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;

6.1.1 Recommendation: Statutorily mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

Policy Goal 6.2 State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

Utah law does not mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

6.2.1 Recommendation: Statutorily mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

Policy Goal 6.3 State law mandates ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Utah law authorizes trafficking-specific training for law enforcement. Pursuant to Utah Code Ann. § 76-5-608(6)–(8) (Law enforcement – Training – Sexual assault, sexual abuse, and human trafficking),

(6) The Office of the Attorney General shall develop and offer training for law enforcement officers in investigating human trafficking offenses.

(7) The training described in Subsection (6) shall be offered to all law enforcement officers in the state by July 1, 2020.

(8) The training described in Subsection (6) shall be offered by the Peace Officer Standards and Training division to all persons seeking certification as a peace officer, in conjunction with the training described in Subsection (1), beginning July 1, 2021.

Resultingly, training regarding child sex trafficking is available to law enforcement. However, law enforcement officers are not statutorily mandated to receive such training nor is the training required to be ongoing.

- 6.3.1 Recommendation: Statutorily mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Policy Goal 6.4 State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

Utah law does not mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

- 6.4.1 Recommendation: Statutorily mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

Policy Goal 6.5 State law mandates child sex trafficking training for school personnel.

Utah law mandates trafficking-specific training for school personnel. Pursuant to Utah Code Ann. § 53G-9-207(2), (3) (Child sexual abuse prevention),

- (2) The state board shall approve, in partnership with the Department of Human Services, age-appropriate instructional materials for the training and instruction described in Subsections (3)(a) and (4).

- (3)

- (a) A school district or charter school shall provide, every other year, training and instruction on child sexual abuse and human trafficking prevention and awareness to:

- (i) school personnel in elementary and secondary schools on:

- (A) responding to a disclosure of child sexual abuse in a supportive, appropriate manner;

- (B) identifying children who are victims or may be at risk of becoming victims of human trafficking or commercial sexual exploitation; and

- (C) the mandatory reporting requirements described in Sections 53E-6-701 [Mandatory reporting of physical or sexual abuse of students] and 62A-4a-403 [Reporting requirements – Exceptions]; and

-

- (b) A school district or charter school shall use the instructional materials approved by the state board under Subsection (2) to provide the training and instruction to school personnel . . . under Subsection (3)(a).

Policy Goal 6.6 State law mandates child sex trafficking prevention education in schools.

Utah law authorizes child sex trafficking prevention education in elementary schools. Pursuant to Utah Code Ann. § 53G-9-207(2)–(5)(b) (Child sexual abuse prevention),

- (2) The state board shall approve, in partnership with the Department of Human Services, age-appropriate instructional materials for the training and instruction described in Subsections (3)(a) and (4).

-

- (4)

- (a) In accordance with Subsections (4)(b) and (5), a school district or charter school may provide instruction on child sexual abuse and human trafficking prevention and awareness to elementary school students using age-appropriate curriculum.

- (b) A school district or charter school that provides the instruction described in Subsection (4)(a) shall use the instructional materials approved by the state board under Subsection (2) to provide the instruction.
- (5)
- (a) An elementary school student may not be given the instruction described in Subsection (4) unless the parent or guardian of the student is:
 - (i) notified in advance of the:
 - (A) instruction and the content of the instruction; and
 - (B) parent’s right to have the student excused from the instruction;
 - (ii) given an opportunity to review the instructional materials before the instruction occurs; and
 - (iii) allowed to be present when the instruction is delivered.
 - (b) Upon the written request of the parent of an elementary school student, the student shall be excused from the instruction described in Subsection (4).

Resultingly, resources and education on child sex trafficking prevention may be available to elementary school students; however, Utah law does not mandate the provision of child sex trafficking prevention education in schools, nor would it be available to older students.

- 6.6.1 Recommendation: Statutorily mandate developmentally and age-appropriate child sex trafficking prevention education in schools.

State Laws Addressing Child Sex Trafficking

1. Utah Code Ann. § 76-5-308.5(2)–(4) (Human trafficking of a child – Penalties) states,

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

(3)

....

(b) Human trafficking of a child for sexual exploitation includes all forms of commercial sexual activity with a child,²⁴ including sexually explicit performance, prostitution, participation in the production of pornography, performance in a strip club, and exotic dancing or display.

(4) Human trafficking of a child in violation of this section is a first degree felony.

A first degree felony is punishable by imprisonment for 5 years to life and a possible fine up to \$10,000. Utah Code Ann. §§ 76-3-203(1), 76-3-301(1)(a).

2. Utah Code Ann. § 76-5-309(4) (Human trafficking and human smuggling – Penalties) states,

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

....

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

A first degree felony is punishable by imprisonment for 5 years to life and a possible fine up to \$10,000. Utah Code Ann. §§ 76-3-203(1), 76-3-301(1)(a).

²⁴ Utah Code Ann. § 76-5-308.5(1) defines “commercial sexual activity” as “any sexual act with a child, on account of which anything of value is given to or received by any person.”

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. Utah Code Ann. § 76-10-1306 (Aggravated exploitation of prostitution) states,

(1) A person is guilty of aggravated exploitation²⁵ if:

.....

(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

.....

.....

(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.

A first degree felony is punishable by imprisonment for 5 years to life and a possible fine up to \$10,000. Utah Code Ann. §§ 76-3-203(1), 76-3-301(1)(a).

2. Utah Code Ann. § 76-5-404.1(4)(i), (5) (Sexual abuse of a child – Aggravated sexual abuse of a child) states,

(4) An individual commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (2)²⁶ any of the following circumstances have been charged and admitted or found true in the action for the offense:

.....

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

.....

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

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

²⁵ Pursuant to Utah Code Ann. § 76-10-1305(1) (Exploiting prostitution),

An individual is guilty of exploiting prostitution if the individual:

(a) procures an individual for a place of prostitution;

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

(c) transports an individual into or within this state with a purpose to promote that individual'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, or an individual the actor believes to be a prostitute, pursuant to their understanding that the actor is to share therein;

or

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

²⁶ Pursuant to Utah Code Ann. § 76-5-404.1(2),

An individual commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, pubic area, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, with intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual regardless of the sex of any participant.

- (b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact finds that during the course of the commission of the aggravated sexual abuse of a child the defendant caused serious bodily injury to another; or
- (c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual abuse of a child, the defendant was previously convicted of a grievous sexual offense.
- (6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:
 - (a) for purposes of Subsection (5)(b), 15 years and which may be for life; or
 - (b) for purposes of Subsection (5)(a) or (b):
 - (i) 10 years and which may be for life; or
 - (ii) six years and which may be for life.

In addition to the terms of imprisonment noted above, offenders face a possible fine up to \$10,000. Utah Code Ann. § 76-3-301(1)(a) (Fines of individuals).

3. Utah Code Ann. § 76-10-1303 (Patronizing a prostitute) states,

- (1) An individual is guilty of patronizing a prostitute when the individual:
 - (a) pays or offers or agrees to pay a prostitute, or an individual the actor believes to be a prostitute, 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.

.....

- (5) 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 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.

A third degree felony is punishable by imprisonment for up to 5 years and a possible fine up to \$5,000. Utah Code Ann. §§ 76-3-203(3), 76-3-301(1)(b).

4. Utah Code Ann. § 76-10-1313(1), (5) (Sexual solicitation – Penalty) states,

- (1) An individual except for a child under Section 76-10-1315 [Safe harbor for children as victims in commercial sex or sexual solicitation] is guilty of sexual solicitation when the individual:
 - (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) with intent 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 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.

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

A third degree felony is punishable by imprisonment for up to 5 years and a possible fine up to \$5,000. Utah Code Ann. §§ 76-3-203(3), 76-3-301(1)(b).