

**Representative Angela Romero** proposes the following substitute bill:

**HUMAN TRAFFICKING MODIFICATIONS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Angela Romero**

Senate Sponsor: Wayne A. Harper

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**LONG TITLE**

**General Description:**

This bill modifies provisions regarding human trafficking.

**Highlighted Provisions:**

This bill:

- ▶ authorizes the court to vacate a conviction for specified offenses if the individual convicted is found to have acted under force, fraud, or coercion;
- ▶ provides the process by which an individual may petition the court for vacatur of a conviction for specified crimes; and
- ▶ makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-5-308**, as last amended by Laws of Utah 2016, Chapter 231

**77-22-2.5**, as last amended by Laws of Utah 2015, Chapter 99

**77-38-15**, as enacted by Laws of Utah 2014, Chapter 140



26 [77-40-112](#), as renumbered and amended by Laws of Utah 2010, Chapter 283  
 27 [78B-9-104](#), as last amended by Laws of Utah 2010, Chapter 153  
 28 [78B-9-105](#), as last amended by Laws of Utah 2008, Chapter 288 and renumbered and  
 29 amended by Laws of Utah 2008, Chapter 3  
 30 [78B-9-106](#), as last amended by Laws of Utah 2010, Chapter 48  
 31 [78B-9-107](#), as last amended by Laws of Utah 2008, Chapters 288, 358 and renumbered  
 32 and amended by Laws of Utah 2008, Chapter 3  
 33 [78B-9-108](#), as last amended by Laws of Utah 2008, Chapter 288 and renumbered and  
 34 amended by Laws of Utah 2008, Chapter 3

35 ENACTS:

36 [77-40-108.5](#), Utah Code Annotated 1953



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

39 Section 1. Section **76-5-308** is amended to read:

40 **76-5-308. Human trafficking -- Human smuggling.**

41 (1) An actor commits human trafficking for forced labor or forced sexual exploitation  
 42 if the actor recruits, harbors, transports, obtains, patronizes, or solicits a person through the use  
 43 of force, fraud, or coercion [~~by means of~~], which may include:

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

46 (b) destroying, concealing, removing, confiscating, or possessing any passport,  
 47 immigration document, or other government-issued identification document;

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

50 (d) using a condition of a person being a debtor due to a pledge of the debtor's personal  
 51 services or the personal services of a person under the control of the debtor as a security for  
 52 debt where the reasonable value of the services is not applied toward the liquidation of the debt  
 53 or the length and nature of those services are not respectively limited and defined; [~~or~~]

54 (e) using a condition of servitude by means of any scheme, plan, or pattern intended to  
 55 cause a person to believe that if the person did not enter into or continue in a condition of  
 56 servitude, that person or a third person would suffer serious harm or physical restraint, or

57 would be threatened with abuse of legal process[;]; or

58 (f) creating or exploiting a relationship where the person is dependent on the actor.

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

61 (b) Human trafficking for forced sexual exploitation includes all forms of forced  
62 commercial sexual activity, ~~[including]~~ which may include the following conduct when the  
63 person acts under force, fraud, or coercion:

64 (i) [forced] sexually explicit performance[;];

65 (ii) [forced] prostitution[;];

66 (iii) [forced] participation in the production of pornography[;];

67 (iv) [forced] performance in strip clubs[;]; and

68 (v) [forced] exotic dancing or display.

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

72 (a) citizens of the United States;

73 (b) permanent resident aliens; or

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

75 Section 2. Section **77-22-2.5** is amended to read:

76 **77-22-2.5. Court orders for criminal investigations for records concerning an**  
77 **electronic communications system or service or remote computing service -- Content --**  
78 **Fee for providing information.**

79 (1) As used in this section:

80 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,  
81 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,  
82 radio, electromagnetic, photoelectronic, or photooptical system.

83 (ii) "Electronic communication" does not include:

84 (A) any wire or oral communication;

85 (B) any communication made through a tone-only paging device;

86 (C) any communication from a tracking device; or

87 (D) electronic funds transfer information stored by a financial institution in a

88 communications system used for the electronic storage and transfer of funds.

89 (b) "Electronic communications service" means any service which provides for users  
90 the ability to send or receive wire or electronic communications.

91 (c) "Electronic communications system" means any wire, radio, electromagnetic,  
92 photooptical, or photoelectronic facilities for the transmission of wire or electronic  
93 communications, and any computer facilities or related electronic equipment for the electronic  
94 storage of the communication.

95 (d) "Internet service provider" has the same definition as in Section [76-10-1230](#).

96 (e) "Prosecutor" has the same definition as in Section [77-22-2](#).

97 (f) "Remote computing service" means the provision to the public of computer storage  
98 or processing services by means of an electronic communications system.

99 (g) "Sexual offense against a minor" means:

100 (i) sexual exploitation of a minor as defined in Section [76-5b-201](#) or attempted sexual  
101 exploitation of a minor;

102 (ii) a sexual offense or attempted sexual offense committed against a minor in violation  
103 of Title 76, Chapter 5, Part 4, Sexual Offenses;

104 (iii) dealing in or attempting to deal in material harmful to a minor in violation of  
105 Section [76-10-1206](#); ~~or~~

106 (iv) enticement of a minor or attempted enticement of a minor in violation of Section  
107 [76-4-401](#)~~[?]~~; or

108 (v) human trafficking of a child in violation of Section [76-5-308.5](#).

109 (2) When a law enforcement agency is investigating a sexual offense against a minor,  
110 an offense of stalking under Section [76-5-106.5](#), or an offense of child kidnapping under  
111 Section [76-5-301.1](#), and has reasonable suspicion that an electronic communications system or  
112 service or remote computing service has been used in the commission of a criminal offense, a  
113 law enforcement agent shall:

114 (a) articulate specific facts showing reasonable grounds to believe that the records or  
115 other information sought, as designated in Subsections (1)(c)(i) through (v), are relevant and  
116 material to an ongoing investigation;

117 (b) present the request to a prosecutor for review and authorization to proceed; and

118 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. 2703

119 and 18 U.S.C. 2702, to the electronic communications system or service or remote computing  
120 service provider that owns or controls the Internet protocol address, websites, email address, or  
121 service to a specific telephone number, requiring the production of the following information,  
122 if available, upon providing in the court order the Internet protocol address, email address,  
123 telephone number, or other identifier, and the dates and times the address, telephone number,  
124 or other identifier was suspected of being used in the commission of the offense:

- 125 (i) names of subscribers, service customers, and users;
- 126 (ii) addresses of subscribers, service customers, and users;
- 127 (iii) records of session times and durations;
- 128 (iv) length of service, including the start date and types of service utilized; and
- 129 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,  
130 including any temporarily assigned network address.

131 (3) A court order issued under this section shall state that the electronic  
132 communications system or service or remote computing service provider shall produce any  
133 records under Subsections (2)(c)(i) through (v) that are reasonably relevant to the investigation  
134 of the suspected criminal activity or offense as described in the court order.

135 (4) (a) An electronic communications system or service or remote computing service  
136 provider that provides information in response to a court order issued under this section may  
137 charge a fee, not to exceed the actual cost, for providing the information.

138 (b) The law enforcement agency conducting the investigation shall pay the fee.

139 (5) The electronic communications system or service or remote computing service  
140 provider served with or responding to the court order may not disclose the court order to the  
141 account holder identified pursuant to the court order for a period of 90 days.

142 (6) If the electronic communications system or service or remote computing service  
143 provider served with the court order does not own or control the Internet protocol address,  
144 websites, or email address, or provide service for the telephone number that is the subject of  
145 the court order, the provider shall notify the investigating law enforcement agency that it does  
146 not have the information.

147 (7) There is no cause of action against any provider or wire or electronic  
148 communication service, or its officers, employees, agents, or other specified persons, for  
149 providing information, facilities, or assistance in accordance with the terms of the court order

150 issued under this section or statutory authorization.

151 (8) (a) A court order issued under this section is subject to the provisions of Title 77,  
152 Chapter 23b, Access to Electronic Communications.

153 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,  
154 Access to Electronic Communications, apply to providers and subscribers subject to a court  
155 order issued under this section.

156 (9) Every prosecutorial agency shall annually on or before February 15 report to the  
157 Commission on Criminal and Juvenile Justice:

158 (a) the number of requests for court orders authorized by the prosecutorial agency;

159 (b) the number of orders issued by the court and the criminal offense, pursuant to  
160 Subsection (2), each order was used to investigate; and

161 (c) if the court order led to criminal charges being filed, the type and number of  
162 offenses charged.

163 Section 3. Section **77-38-15** is amended to read:

164 **77-38-15. Civil action against human traffickers and human smugglers.**

165 (1) A victim of a person that commits the offense of human trafficking or human  
166 smuggling under Section [76-5-308](#), human trafficking of a child under Section [76-5-308.5](#), or  
167 aggravated human trafficking or aggravated human smuggling under Section [76-5-310](#), may  
168 bring a civil action against that person.

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

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

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

175 (4) An action under this section shall be commenced no later than 10 years after the  
176 later of:

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

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

180 (c) if the victim was unable to bring an action due to a disability, the day on which the

181 victim's disability ends.

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

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

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

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

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

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

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

193 (b) the victim resides; or

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

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

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

200 Section 4. Section **77-40-108.5** is enacted to read:

201 **77-40-108.5. Distribution for order for vacatur.**

202 (1) A person who receives an order for vacatur under Subsection [78B-9-108\(2\)](#) shall be  
203 responsible for delivering a copy of the order for vacatur to all affected criminal justice  
204 agencies and officials including the court, arresting agency, booking agency, prosecuting  
205 agency, Department of Corrections, and the bureau.

206 (2) In order to complete delivery of the order for vacatur to the bureau, the petitioner  
207 shall complete and attach to the order for vacatur an application for a certificate of eligibility  
208 for expungement, including identifying information and fingerprints, as provided in Subsection  
209 [77-40-103\(1\)](#).

210 (3) The bureau shall treat the order for vacatur and attached certificate of eligibility for  
211 expungement the same as a valid order for expungement under Section [77-40-108](#), except as

212 provided in this section.

213 (4) Unless otherwise provided by law or ordered by a court of competent jurisdiction to  
 214 respond differently, a person who has received a vacatur of conviction under ~~Ĥ~~→ [Section  
 215 78B-9-104(9)(4)] Subsection 78B-9-108(2) ←Ĥ , may respond to any inquiry as though the  
 215a conviction did not occur.

216 (5) The bureau shall forward a copy of the order for vacatur to the Federal Bureau of  
 217 Investigation.

218 (6) An agency receiving an order for vacatur shall ~~Ĥ~~→ [delete] expunge ←Ĥ the  
 218a petitioner's identifying  
 219 information contained in records in the agency's possession relating to the incident for which  
 220 vacatur is ordered.

221 (7) A government agency or official may not divulge information contained in a record  
 222 of arrest, investigation, detention, or conviction after receiving an order for vacatur to any  
 223 person or agency, except for:

224 (a) the petitioner for whom vacatur was ordered; or

225 (b) Peace Officer Standards and Training, pursuant to Section [53-6-203](#) and Subsection  
 226 [77-40-109\(2\)\(b\)\(ii\)](#).

227 (8) The bureau may not count vacated convictions against any future expungement  
 228 eligibility.

229 Section 5. Section **77-40-112** is amended to read:

230 **77-40-112. Penalty.**

231 [~~Any person who willfully violates any prohibition in this chapter is guilty of a class A~~  
 232 ~~misdemeanor unless the prohibition specifically indicates a different penalty.] Any person who  
 233 knowingly or intentionally discloses any identifying information from any record of conviction  
 234 that has been pardoned, expunged, or vacated, unless allowed by law, is guilty of a class A  
 235 misdemeanor.~~

236 Section 6. Section **78B-9-104** is amended to read:

237 **78B-9-104. Grounds for relief -- Retroactivity of rule.**

238 (1) Unless precluded by Section [78B-9-106](#) or [78B-9-107](#), a person who has been  
 239 convicted and sentenced for a criminal offense may file an action in the district court of  
 240 original jurisdiction for post-conviction relief to vacate or modify the conviction or sentence  
 241 upon the following grounds:

242 (a) the conviction was obtained or the sentence was imposed in violation of the United



243 States Constitution or Utah Constitution;

244 (b) the conviction was obtained or the sentence was imposed under a statute that is in  
245 violation of the United States Constitution or Utah Constitution, or the conduct for which the  
246 petitioner was prosecuted is constitutionally protected;

247 (c) the sentence was imposed or probation was revoked in violation of the controlling  
248 statutory provisions;

249 (d) the petitioner had ineffective assistance of counsel in violation of the United States  
250 Constitution or Utah Constitution;

251 (e) newly discovered material evidence exists that requires the court to vacate the  
252 conviction or sentence, because:

253 (i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of  
254 trial or sentencing or in time to include the evidence in any previously filed post-trial motion or  
255 post-conviction proceeding, and the evidence could not have been discovered through the  
256 exercise of reasonable diligence;

257 (ii) the material evidence is not merely cumulative of evidence that was known;

258 (iii) the material evidence is not merely impeachment evidence; and

259 (iv) viewed with all the other evidence, the newly discovered material evidence  
260 demonstrates that no reasonable trier of fact could have found the petitioner guilty of the  
261 offense or subject to the sentence received; or

262 (f) the petitioner can prove entitlement to relief under a rule announced by the United  
263 States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after conviction  
264 and sentence became final on direct appeal, and that:

265 (i) the rule was dictated by precedent existing at the time the petitioner's conviction or  
266 sentence became final; or

267 (ii) the rule decriminalizes the conduct that comprises the elements of the crime for  
268 which the petitioner was convicted.

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

271 (i) Section 58-37-8, possession of a controlled substance;

272 (ii) Section 74-10-1304, aiding prostitution;

273 (iii) Section 76-6-206, criminal trespass;

- 274           (iv) Section 76-6-413, theft;  
275           (v) Section 76-6-502, possession of forged writing or device for writing;  
276           (vi) Sections 76-6-602 through 76-6-608, retail theft;  
277           (vii) Subsection 76-6-1105(2)(a)(i), unlawful possession of another's identification  
278 document;  
279           (viii) Section 76-9-702, lewdness;  
280           (ix) Section 76-10-1302, prostitution; or  
281           (x) Section 76-10-1313, sexual solicitation.

282           (2) The court may not grant relief from a conviction or sentence unless the petitioner  
283 establishes that there would be a reasonable likelihood of a more favorable outcome in light of  
284 the facts proved in the post-conviction proceeding, viewed with the evidence and facts  
285 introduced at trial or during sentencing.

286           (3) The court may not grant relief from a conviction based on a claim that the petitioner  
287 is innocent of the crime for which convicted except as provided in Title 78B, Chapter 9, Part 3,  
288 Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.  
289 Claims under Part 3, Postconviction Testing of DNA or Part 4, Postconviction Determination  
290 of Factual Innocence of this chapter may not be filed as part of a petition under this part, but  
291 shall be filed separately and in conformity with the provisions of Part 3, Postconviction Testing  
292 of DNA or Part 4, Postconviction Determination of Factual Innocence.

293           Section 7. Section **78B-9-105** is amended to read:

294           **78B-9-105. Burden of proof.**

295           (1) ~~[The]~~ (a) Except for claims raised under 78B-9-104(1)(g), the petitioner has the  
296 burden of pleading and proving by a preponderance of the evidence the facts necessary to  
297 entitle the petitioner to relief.

298           (b) For claims raised under 78B-9-104(1)(g), the petitioner has the burden of pleading  
299 and proving by clear and convincing evidence the facts necessary to entitle the petitioner to  
300 relief.

301           (c) The court may not grant relief without determining that the petitioner is entitled to  
302 relief under the provisions of this chapter and in light of the entire record, including the record  
303 from the criminal case under review.

304           (2) The respondent has the burden of pleading any ground of preclusion under Section

305 [78B-9-106](#), but once a ground has been pled, the petitioner has the burden to disprove its  
306 existence by a preponderance of the evidence.

307 Section 8. Section **78B-9-106** is amended to read:

308 **78B-9-106. Preclusion of relief -- Exception.**

309 (1) A person is not eligible for relief under this chapter upon any ground that:

310 (a) may still be raised on direct appeal or by a post-trial motion;

311 (b) was raised or addressed at trial or on appeal;

312 (c) could have been but was not raised at trial or on appeal;

313 (d) was raised or addressed in any previous request for post-conviction relief or could  
314 have been, but was not, raised in a previous request for post-conviction relief; or

315 (e) is barred by the limitation period established in Section [78B-9-107](#).

316 (2) (a) The state may raise any of the procedural bars or time bar at any time, including  
317 during the state's appeal from an order granting post-conviction relief, unless the court  
318 determines that the state should have raised the time bar or procedural bar at an earlier time.

319 (b) Any court may raise a procedural bar or time bar on its own motion, provided that it  
320 gives the parties notice and an opportunity to be heard.

321 (3) (a) Notwithstanding Subsection (1)(c), a person may be eligible for relief on a basis  
322 that the ground could have been but was not raised at trial or on appeal, if the failure to raise  
323 that ground was due to ineffective assistance of counsel[-]; or

324 (b) Notwithstanding Subsections (1)(c) and (1)(d), a person may be eligible for relief  
325 on a basis that the ground could have been but was not raised at trial, on appeal, or in a  
326 previous request for post-conviction relief, if the failure to raise that ground was due to force,  
327 fraud, or coercion as defined in Section [76-5-308](#).

328 (4) This section authorizes a merits review only to the extent required to address the  
329 exception set forth in Subsection (3).

330 Section 9. Section **78B-9-107** is amended to read:

331 **78B-9-107. Statute of limitations for postconviction relief.**

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

334 (2) For purposes of this section, the cause of action accrues on the latest of the  
335 following dates:

336 (a) the last day for filing an appeal from the entry of the final judgment of conviction, if  
337 no appeal is taken;

338 (b) the entry of the decision of the appellate court which has jurisdiction over the case,  
339 if an appeal is taken;

340 (c) the last day for filing a petition for writ of certiorari in the Utah Supreme Court or  
341 the United States Supreme Court, if no petition for writ of certiorari is filed;

342 (d) the entry of the denial of the petition for writ of certiorari or the entry of the  
343 decision on the petition for certiorari review, if a petition for writ of certiorari is filed;

344 (e) the date on which petitioner knew or should have known, in the exercise of  
345 reasonable diligence, of evidentiary facts on which the petition is based; or

346 (f) the date on which the new rule described in Subsection [78B-9-104\(1\)\(f\)](#) is  
347 established.

348 (3) The limitations period is tolled for any period during which the petitioner was  
349 prevented from filing a petition due to state action in violation of the United States  
350 Constitution, ~~or~~ due to physical or mental incapacity, or for claims arising under Subsection  
351 [78B-9-104\(1\)\(g\)](#), due to force, fraud, or coercion as defined in Section [76-5-308](#). The  
352 petitioner has the burden of proving by a preponderance of the evidence that the petitioner is  
353 entitled to relief under this Subsection (3).

354 (4) The statute of limitations is tolled during the pendency of the outcome of a petition  
355 asserting:

356 (a) exoneration through DNA testing under Section [78B-9-303](#); or

357 (b) factual innocence under Section [78B-9-401](#).

358 (5) Sections [77-19-8](#), [78B-2-104](#), and [78B-2-111](#) do not extend the limitations period  
359 established in this section.

360 Section 10. Section **78B-9-108** is amended to read:

361 **78B-9-108. Effect of granting relief -- Notice.**

362 (1) If the court grants the petitioner's request for relief, except requests for relief under  
363 Subsection [78B-9-104\(1\)\(g\)](#), it shall either:

364 (a) modify the original conviction or sentence; or

365 (b) vacate the original conviction or sentence and order a new trial or sentencing  
366 proceeding as appropriate.

367           (2) If the court grants the petitioner's request for relief under Subsection  
368 [78B-9-104](#)(1)(g), the court shall:

369           (a) vacate the original conviction and sentence; and

370           (b) order the petitioner's records expunged pursuant to Section [77-40-108.5](#).

371           ~~[(2)]~~ (3) (a) If the petitioner is serving a felony sentence, the order shall be stayed for  
372 five days. Within the stay period, the respondent shall give written notice to the court and the  
373 petitioner that the respondent will pursue a new trial or sentencing proceedings, appeal the  
374 order, or take no action.

375           (b) If the respondent fails to provide notice or gives notice at any time during the stay  
376 period that it intends to take no action, the court shall lift the stay and deliver the order to the  
377 custodian of the petitioner.

378           (c) If the respondent gives notice of intent to appeal the court's decision, the stay  
379 provided for by Subsection (2)(a) shall remain in effect until the appeal concludes, including  
380 any petitions for rehearing or for discretionary review by a higher court. The court may lift the  
381 stay if the petitioner can make the showing required for a certificate of probable cause under  
382 Section [77-20-10](#) and URCP 27.

383           (d) If the respondent gives notice that it intends to retry or resentence the petitioner, the  
384 trial court may order any supplementary orders as to arraignment, trial, sentencing, custody,  
385 bail, discharge, or other matters that may be necessary.