

HUMAN TRAFFICKING MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: Wayne A. Harper

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
- 77-40-112**, as renumbered and amended by Laws of Utah 2010, Chapter 283
- 78B-9-104**, as last amended by Laws of Utah 2010, Chapter 153
- 78B-9-105**, as last amended by Laws of Utah 2008, Chapter 288 and renumbered and 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 if
42 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 would
57 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, images,
81 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,
82 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 the
90 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, an
110 offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under Section
111 76-5-301.1, and has reasonable suspicion that an electronic communications system or service
112 or remote computing service has been used in the commission of a criminal offense, a law
113 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, if
122 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, or
124 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 the
145 court order, the provider shall notify the investigating law enforcement agency that it does not
146 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 offenses
162 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 agencies
204 and officials including the court, arresting agency, booking agency, prosecuting agency,
205 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 for
208 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 Section
215 [78B-9-108\(2\)](#), may respond to any inquiry as though the 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 expunge the 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.]~~ An employee or
233 agent of an agency that is prohibited from disseminating information from expunged, vacated,
234 or pardoned records under Section 77-27-5.1 or 77-40-109 who knowingly or intentionally
235 discloses identifying information from the expunged, vacated, or pardoned record that has been
236 pardoned, vacated, or expunged, unless allowed by law, is guilty of a class A misdemeanor.

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

238 **78B-9-104. Grounds for relief -- Retroactivity of rule.**

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

243 (a) the conviction was obtained or the sentence was imposed in violation of the United
244 States Constitution or Utah Constitution;

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

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

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

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

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

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

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

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

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

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

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

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

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

273 (ii) Section 76-10-1304, aiding prostitution;

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

275 (iv) Section 76-6-413, theft;

276 (v) Section 76-6-502, possession of forged writing or device for writing;

277 (vi) Sections 76-6-602 through 76-6-608, retail theft;

278 (vii) Subsection 76-6-1105(2)(a)(i), unlawful possession of another's identification
279 document;

280 (viii) Section 76-9-702, lewdness;

281 (ix) Section 76-10-1302, prostitution; or

282 (x) Section 76-10-1313, sexual solicitation.

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

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

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

295 **78B-9-105. Burden of proof.**

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

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

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

305 (2) The respondent has the burden of pleading any ground of preclusion under Section
306 **78B-9-106**, but once a ground has been pled, the petitioner has the burden to disprove its
307 existence by a preponderance of the evidence.

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

309 **78B-9-106. Preclusion of relief -- Exception.**

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

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

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

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

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

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

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

332 **78B-9-107. Statute of limitations for postconviction relief.**

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

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

337 (a) the last day for filing an appeal from the entry of the final judgment of conviction, if

338 no appeal is taken;

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

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

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

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

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

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

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

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

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

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

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

362 **78B-9-108. Effect of granting relief -- Notice.**

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

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

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

368 (2) If the court grants the petitioner's request for relief under Subsection
369 78B-9-104(1)(g), the court shall:

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

371 (b) order the petitioner's records expunged pursuant to Section 77-40-108.5.

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

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

379 (c) If the respondent gives notice of intent to appeal the court's decision, the stay
380 provided for by Subsection [~~2~~] (3)(a) shall remain in effect until the appeal concludes,
381 including any petitions for rehearing or for discretionary review by a higher court. The court
382 may lift the stay if the petitioner can make the showing required for a certificate of probable
383 cause under Section 77-20-10 and URCP 27.

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