

Utah State Report State Ratings 2014

The Polaris annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

Recognition: Most Improved in 2014

Rating: Tier One (green)

Total Points: 8

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 3(a) Asset Forfeiture; 3(b) Investigative Tools; 4(b) Human Trafficking Task Force; 7 Safe Harbor for Minors; 8 Victim Assistance; 9 Civil Remedy.

Categories Still Needed: 4(a) Training for Law Enforcement; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 6 Posting of a Hotline; and 10 Vacating Convictions.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

§ 76-5-308. Human trafficking and smuggling.

(1) An actor commits human trafficking for forced labor or forced sexual exploitation if the actor recruits, harbors, transports, or obtains a person through the use of force, fraud, or coercion by means of:

- (a) threatening serious harm to, or physical restraint against, that person or a third person;
- (b) destroying, concealing, removing, confiscating, or possessing any passport, immigration document, or other government identification document;
- (c) abusing or threatening abuse of the law or legal process against the person or a third person;
- (d) using a condition of a person being a debtor due to a pledge of the debtor's personal services or the personal services of a person under the control of the debtor as a security for debt where the reasonable value of the services is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined; or



- (e) using a condition of servitude by means of any scheme, plan, or pattern intended to cause a person to believe that if the person did not enter into or continue in a condition of servitude, that person or a third person would suffer serious harm or physical restraint, or would be threatened with abuse of legal process.
- (2) (a) Human trafficking for forced labor includes forced labor in industrial facilities, sweatshops, households, agricultural enterprises, and any other workplace.
 - (b) Human trafficking for forced sexual exploitation includes all forms of forced commercial sexual activity, including forced sexually explicit performance, forced prostitution, forced participation in the production of pornography, forced performance in strip clubs, and forced exotic dancing or display.
- (3) A person commits human smuggling by transporting or procuring the transportation for one or more persons for a commercial purpose, knowing or having reason to know that the person or persons transported or to be transported are not:
 - (a) citizens of the United States;
 - (b) permanent resident aliens; or
 - (c) otherwise lawfully in this state or entitled to be in this state.

§ 76-5-309. Human trafficking and human smuggling -- Penalties.

- (1) Human trafficking for forced labor and human trafficking for forced sexual exploitation are each a second degree felony, except under Section 76-5-310.
- (2) Human smuggling of one or more human beings for profit or for a commercial purpose is a third degree felony, except under Section 76-5-310.
- (3) Human trafficking and human smuggling are each a separate offense from any other crime committed in relationship to the commission of either of these offenses.
- (4) A person who benefits financially or materially by receiving anything of value from knowing participation in:
 - (a) human trafficking is guilty of a second degree felony; and
 - (b) human smuggling is guilty of a third degree felony.
- (5) A person commits a separate offense of human trafficking or human smuggling for each person who is smuggled or trafficked under Section 76-5-308 or 76-5-310.

§ 76-5-310. Aggravated human trafficking and aggravated human smuggling -- Penalties.

- (1) An actor commits aggravated human trafficking for forced labor or forced sexual exploitation or aggravated human smuggling if, in the course of committing a human trafficking or human smuggling offense under Section 76-5-309, the offense:
 - (a) results in the death of the trafficked or smuggled person;
 - (b) results in serious bodily injury of the trafficked or smuggled person;
 - (c) involves:
 - (i) rape under Section 76-5-402;
 - (ii) rape of a child under Section 76-5-402.1;
 - (iii) object rape under Section 76-5-402.2;
 - (iv) object rape of a child under Section 76-5-402.3;
 - (v) forcible sodomy under Section 76-5-403;
 - (vi) sodomy on a child under Section 76-5-403.1;
 - (vii) aggravated sexual abuse of a child under Section 76-5-404.1; or
 - (viii) aggravated sexual assault under 76-5-405;



- (d) involves more than 10 victims in a single episode of human trafficking or human smuggling; or
- (e) involves a victim who is held against the victim's will for longer than 180 consecutive days.
- (2) An actor commits aggravated human trafficking for forced labor or forced sexual exploitation if the offense involves a victim who is younger than 18 years of age at the time of the commission of the offense of trafficking.
- (3) An actor commits aggravated human smuggling if the actor commits human smuggling under Subsection 76-5-309(2) and any human being whom the person engages in smuggling is:
 - (a) younger than 18 years of age; and
 - (b) not accompanied by a family member who is 18 years of age or older.
- (4) (a) Aggravated human trafficking for forced labor or forced sexual exploitation and aggravated human smuggling for profit or commercial purposes are each a first degree felony.
- (b) Aggravated human trafficking and aggravated human smuggling are each a separate offense from any other crime committed in relationship to the commission of either of these offenses.

Category 2: Labor Trafficking Statute

Yes. See § 76-5-308.

Category 3(a): Asset Forfeiture

§ 24-4-102. Property subject to forfeiture.

- (1) Except as provided in Subsection (3), all property that has been used to facilitate the commission of a federal or state offense and any proceeds of criminal activity may be forfeited under this chapter, including:
 - (a) real property, including things growing on, affixed to, and found in land; and
 - (b) tangible and intangible personal property, including money, rights, privileges, interests, claims, and securities of any kind.
- (2) If the property is used to facilitate a violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15, or would not otherwise unlawfully interfere with the exercise of those rights.
- (3) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:
 - (a) the operator of the vehicle has previously been convicted of a violation, committed after May 12, 2009, of:
 - (i) a felony driving under the influence violation under Section 41-6a-502;
 - (ii) a felony violation under Subsection 58-37-8(2)(g); or
 - (iii) automobile homicide under Section 76-5-207; or
 - (b) the operator of the vehicle was driving on a denied, suspended, revoked, or disqualified license; and



- (i) the denial, suspension, revocation, or disqualification under Subsection (3)(c) was imposed because of a violation under:
 - (A) Section 41-6a-502;
 - (B) Section 41-6a-517;
 - (C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);
 - (D) Section 41-6a-520;
 - (E) Subsection 58-37-8(2)(g);
 - (F) Section 76-5-207; or
 - (G) a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of the sections or ordinances described in Subsections (3)(b)(i)(A) through (F); or
- (ii) the denial, suspension, revocation, or disqualification described in Subsections (3)(b)(i)(A) through (G):
 - (A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension, revocation, or disqualification; and
 - (B) the original denial, suspension, revocation, or disqualification was imposed because of a violation described in Subsections (3)(b)(i)(A) through (G).

Category 3(b): Investigative Tools

§ 76-10-1602. Definitions

As used in this part:

- (1) “Enterprise” means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.
- (2) “Pattern of unlawful activity” means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.
- (3) “Person” includes any individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.
- (4) “Unlawful activity” means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony:
 - (n) human trafficking, human smuggling, or aggravated human trafficking, Sections 76-5-308, 76-5-309, and 76-5-310;
 - (bbbb) prostitution, Section 76-10-1302;
 - (cccc) aiding prostitution, Section 76-10-1304;
 - (dddd) exploiting prostitution, Section 76-10-1305;



(eeee) aggravated exploitation of prostitution, Section 76-10-1306;
(jjjj) any act illegal under the laws of the United States and enumerated in 18 U.S.C. Sec. 1961 (1)(B), (C), and (D).

§ 77-23a-8. Court order to authorize or approve interception -- Procedure.

(1) The attorney general of the state, any assistant attorney general specially designated by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy district attorney specially designated by the county attorney or by the district attorney, may authorize an application to a judge of competent jurisdiction for an order for an interception of wire, electronic, or oral communications by any law enforcement agency of the state, the federal government or of any political subdivision of the state that is responsible for investigating the type of offense for which the application is made.

(2) The judge may grant the order in conformity with the required procedures when the interception sought may provide or has provided evidence of the commission of:

- (iv) human trafficking or human smuggling, Section 76-5-308; or
- (v) aggravated human trafficking or aggravated human smuggling, Section 76-5-310;

Category 4(a): Training for Law Enforcement

None.

Category 4(b): Human Trafficking Task Force

§ 67-5-22.7. Multi-agency strike force to combat violent and other major felony crimes associated with illegal immigration and human trafficking -- Fraudulent Documents Identification Unit.

(1) The Office of the Attorney General is authorized to administer and coordinate the operation of a multi-agency strike force to combat violent and other major felony crimes committed within the state that are associated with illegal immigration and human trafficking.

(2) The office shall invite officers of the U.S. Immigration and Customs Enforcement and state and local law enforcement personnel to participate in this mutually supportive, multi-agency strike force to more effectively utilize their combined skills, expertise, and resources.

(3) The strike force shall focus its efforts on detecting, investigating, deterring, and eradicating violent and other major felony criminal activity related to illegal immigration and human trafficking.

(4) In conjunction with the strike force and subject to available funding, the Office of the Attorney General shall establish a Fraudulent Documents Identification Unit:

- (a) for the primary purpose of investigating, apprehending, and prosecuting individuals or entities that participate in the sale or distribution of fraudulent documents used for identification purposes;
- (b) to specialize in fraudulent identification documents created and prepared for individuals who are unlawfully residing within the state; and
- (c) to administer the Identity Theft Victims Restricted Account created under Subsection (5).

(5) (a) There is created a restricted account in the General Fund known as the "Identity Theft Victims Restricted Account."



(b) The Identity Theft Victims Restricted Account shall consist of money appropriated to the Identity Theft Victims Restricted Account by the Legislature.

(c) Subject to appropriations from the Legislature, beginning on the program start date, as defined in Section 63G-12-102, the Fraudulent Documents Identification Unit may expend the money in the Identity Theft Victims Restricted Account to pay a claim as provided in this Subsection (5) to a person who is a victim of identity theft prosecuted under Section 76-6-1102 or 76-10-1801.

(d) To obtain payment from the Identity Theft Victims Restricted Account, a person shall file a claim with the Fraudulent Documents Identification Unit by no later than one year after the day on which an individual is convicted, pleads guilty to, pleads no contest to, pleads guilty in a similar manner to, or resolved by diversion or its equivalent an offense under Section 76-6-1102 or 76-10-1801 for the theft of the identity of the person filing the claim.

(e) A claim filed under this Subsection (5) shall include evidence satisfactory to the Fraudulent Documents Identification Unit:

- (i) that the person is the victim of identity theft described in Subsection (5)(d); and
- (ii) of the actual damages experienced by the person as a result of the identity theft that are not recovered from a public or private source.

(f) The Fraudulent Documents Identification Unit shall pay a claim from the Identity Theft Victims Restricted Account:

- (i) if the Fraudulent Documents Identification Unit determines that the person has provided sufficient evidence to meet the requirements of Subsection (5)(e);
- (ii) in the order that claims are filed with the Fraudulent Documents Identification Unit; and
- (iii) to the extent that there is money in the Identity Theft Victims Restricted Account.

(g) If there is insufficient money in the Identity Theft Victims Restricted Account when a claim is filed under this Subsection (5) to pay the claim in full, the Fraudulent Documents Identification Unit may pay a claim when there is sufficient money in the account to pay the claim in the order that the claims are filed.

(6) The strike force shall make an annual report on its activities to the governor and the Legislature's Law Enforcement and Criminal Justice Interim Committee by December 1, together with any proposed recommendations for modifications to this section.

Category 5: No Requirement of Force, Fraud, or Coercion for Sex Trafficking of Minors

None.

Category 6: Posting of a Human Trafficking Hotline

None.

Category 6: Safe Harbor

§ 76-10-1302. Prostitution.

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



- (a) engages in any sexual activity with another individual for a fee;
 - (b) is an inmate of a house of prostitution; or
 - (c) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.
- (2) (a) Except as provided in Subsection (2)(b) or Section 76-10-1309, prostitution is a class B misdemeanor.
- (b) Except as provided in Section 76-10-1309, an individual who is convicted a second time, and on all subsequent convictions, of a subsequent offense of prostitution under this section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of a class A misdemeanor.
- (3) (a) As used in this Subsection (3):
- (i) "Child" is as defined in Section 76-10-1301.
 - (ii) "Child engaged in prostitution" means a child who engages in conduct described in Subsection (1).
 - (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to commit or engage in any sexual activity with another person for a fee under Subsection 76-10-1313(1)(a) or (c).
 - (iv) "Division" means the Division of Child and Family Services created in Section 62A-4a-103.
 - (v) "Receiving center" is as defined in Section 62A-7-101.
- (b) Upon encountering a child engaged in prostitution or sexual solicitation, a law enforcement officer shall:
- (i) conduct an investigation;
 - (ii) refer the child to the division;
 - (iii) if an arrest is made, bring the child to a receiving center, if available; and
 - (iv) contact the child's parent or guardian, if practicable.
- (c) If a law enforcement officer refers a child to the division under Subsection (3)(b)(ii), the division shall:
- (i) check the division's records to verify whether law enforcement referred the child to the division under Subsection (3)(b)(ii) on a prior occasion; and
 - (ii) provide the information described in Subsection (3)(c)(i) to the law enforcement officer.
- (d) If law enforcement has not referred the child to the division under Subsection (3)(b)(ii) on at least one prior occasion, the division shall provide services to the child under Title 62A, Chapter 4a, Child and Family Services.
- (e) If law enforcement has referred the child to the division under Subsection (3)(b)(ii) on at least one prior occasion the child may be subject to delinquency proceedings under Title 62A, Chapter 7, Juvenile Justice Services, and Section 78A-6-601 through Section 78A-6-704.

Category 8: Victim Assistance

§ 62A-4a-105. Division responsibilities.

- (1) The division shall:
- (a) administer services to minors and families, including:
 - (i) child welfare services;
 - (ii) domestic violence services; and



- (iii) all other responsibilities that the Legislature or the executive director may assign to the division;
- (b) provide the following services:
 - (i) financial and other assistance to an individual adopting a child with special needs under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the child as a legal ward of the state;
 - (ii) non-custodial and in-home services, including:
 - (A) services designed to prevent family break-up; and
 - (B) family preservation services;
 - (iii) reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;
 - (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;
 - (v) shelter care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;
 - (vi) domestic violence services, in accordance with the requirements of federal law;
 - (vii) protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;
 - (viii) substitute care for dependent, abused, neglected, and delinquent children;
 - (ix) programs and services for minors who have been placed in the custody of the division for reasons other than abuse or neglect, under Section 62A-4a-250;
 - (x) 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
 - (xi) training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;
- (c) establish standards for all:
 - (i) contract providers of out-of-home care for minors and families;
 - (ii) facilities that provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division; and
 - (iii) direct or contract providers of domestic violence services described in Subsection (1)(b)(vi);
- (d) have authority to:
 - (i) contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and
 - (ii) approve facilities that meet the standards established under Subsection (1)(c) to provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division;
- (e) cooperate with the federal government in the administration of child welfare and domestic violence programs and other human service activities assigned by the department;
- (f) in accordance with Subsection (2)(a), promote and enforce state and federal laws enacted for the protection of abused, neglected, dependent, delinquent, ungovernable,



and runaway children, and status offenders, in accordance with the requirements of this chapter, unless administration is expressly vested in another division or department of the state;

(g) cooperate with the Employment Development Division in the Department of Workforce Services in meeting the social and economic needs of an individual who is eligible for public assistance;

(h) compile relevant information, statistics, and reports on child and family service matters in the state;

(i) prepare and submit to the department, the governor, and the Legislature reports of the operation and administration of the division in accordance with the requirements of Sections 62A-4a-117 and 62A-4a-118;

(j) provide social studies and reports for the juvenile court in accordance with Section 78A-6-605;

(k) within appropriations from the Legislature, provide or contract for a variety of domestic violence services and treatment methods;

(l) ensure regular, periodic publication, including electronic publication, regarding the number of children in the custody of the division who:

(i) have a permanency goal of adoption; or

(ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314, and promote adoption of those children;

(m) subject to Subsection (2)(b), refer an individual receiving services from the division to the local substance abuse authority or other private or public resource for a court-ordered drug screening test; and

(n) perform other duties and functions required by law.

(2)

(a) In carrying out the requirements of Subsection (1)(f), the division shall:

(i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and with all public and private licensed child welfare agencies and institutions, to develop and administer a broad range of services and support;

(ii) take the initiative in all matters involving the protection of abused or neglected children, if adequate provisions have not been made or are not likely to be made; and

(iii) make expenditures necessary for the care and protection of the children described in this Subsection (2)(a), within the division's budget.

(b) When an individual is referred to a local substance abuse authority or other private or public resource for court-ordered drug screening under Subsection (1)(n), the court shall order the individual to pay all costs of the tests unless:

(i) the cost of the drug screening is specifically funded or provided for by other federal or state programs;

(ii) the individual is a participant in a drug court; or

(iii) the court finds that the individual is impecunious.

(3) Except to the extent provided by rule, the division is not responsible for investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

(4) The division may not require a parent who has a child in the custody of the division to pay for some or all of the cost of any drug testing the parent is required to undergo.



Category 9: Civil Remedy

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

- (1) A victim of a person that commits the offense of human trafficking or human smuggling under Section 76-5-308, or aggravated human trafficking or aggravated human smuggling under Section 76-5-310, 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.
- (3) In an action under this section, the court shall award a prevailing victim reasonable attorney fees and costs.
- (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 of age; 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.
- (6) The court shall offset damages awarded to the victim under this section by any restitution paid to the victim under Title 77, Chapter 38a, Crime Victims Restitution Act.
- (7) A victim may bring an action described in this section in any court of competent jurisdiction where:
- (a) a violation described in Subsection (1) occurred;
 - (b) the victim resides; or
 - (c) the person that commits the offense resides or has a place of business.
- (8) If the victim is deceased or otherwise unable to represent the victim's own interests in court, a legal guardian, family member, representative of the victim, or court appointee may bring an action under this section on behalf of the victim.
- (9) This section does not preclude any other remedy available to the victim under the laws of this state or under federal law.

Category 10: Vacating Convictions

None.

If you would like assistance in enacting laws to fill in the gaps, please contact the Polaris Policy Program at policy@polarisproject.org.