

**Investigation and Prosecution
considerations under the amended
Human Trafficking Statute**

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**I AM NOT AN EXPERT ON HUMAN
TRAFFICKING**

- I have experience prosecuting:
 - aggravated felonies including domestic violence, elder abuse, and homicide;
 - criminal enterprises involving drug distribution, firearms, identification mills, fraud, government impersonation, and;
 - human trafficking.
- This presentation is therefore a consolidation of my experience to facilitate and better identify, investigate, and prosecute the conundrum of human trafficking and her child victims

Statistics in Utah

- In a recent email solicitation requesting information, four police agencies reported 14 human trafficking cases, three victim services reported 62 human trafficking cases, for a total of 76 cases over a four year period.
 - Rosemary McDonough, (super rocking) Paralegal and Grant Coordinator, SECURE Strike Force, Utah Attorney General's Office
- There are other statistics available at the Polaris Project/National Human Trafficking Resource Center at:

<http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/the-nhtcr/overview>

that might be helpful.

 - In Utah, they report 59 calls of human trafficking in 2012, 68 calls in 2011, 34 calls in 2010 and 14 calls in 2009, for a total of 175 calls in four years. There is a breakdown of county and type of case available at <http://www.polarisproject.org/state-map/utah>.

Estimates for trafficking within the United States range from 14,000 to two million annually; international figures reach as high as 27 million victims per year (Weiner and Hala, 2008; Gould, 2010; U.S. Department of State, 2012).

-Trafficking in Persons Symposium Final Report, OJJDP, July 2012

According to a study undertaken in 1998, the average age of entry into sexual exploitation appears to be approximately 14.1 years with a range of 10 to 18 years (Nadon et al., 1998).

-Trafficking in Persons Symposium Final Report, OJJDP, July 2012

Eighty-nine percent of the youth in this study were 16 or younger when they were first sexually exploited. In a comparison study of 21 sexually exploited juveniles with 221 at-risk youth in a midsized city, Bell and Todd (1998) found that the sexually exploited youth were significantly more likely to have experienced physical and sexual abuse, not to be living with their families, to have irregular school attendance and to have previous involvement in delinquency.

-Trafficking in Persons Symposium Final Report, OJJDP, July 2012

In a study of 261 high-risk street-involved youth Stoltz et al. (2007) found that childhood sexual abuse and childhood emotional abuse were independently associated with victimization by child sexual exploitation after controlling for social and demographic variables. Childhood emotional abuse is thought to reduce the coping skills and self-confidence girls need to deal effectively with the high-risk situations they encounter in adolescence, thus increasing their dependence on survival strategies such as trading sex for a place to stay, clothing or protection (Roe-Sepowitz, forthcoming, Stoltz et al. 2007).

-Trafficking in Persons Symposium Final Report, OJJDP, July 2012

Outline of the Presentation

1. Statutory amendments
2. Reporting Trafficking/Smuggling
3. Investigation considerations
4. Prosecution considerations

Statutory Amendments

- Amendments to the Human Trafficking statute
 - Sponsored by Representative Jennifer Seelig
 - HB 163

Statute of Limitations

- 76-1-301. Offenses for which prosecution may be commenced at any time.
- (r) aggravated human trafficking or aggravated human smuggling in violation of Section 76-5-310 ; or
- (s) aggravated exploitation of prostitution involving a child, under Section 76-10-1306 .

76-2-304.5. Mistake as to victim's age not a defense.

- (3) It is not a defense to the crime of aggravated human trafficking or aggravated human smuggling, a violation of Section 76-5-310 , 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.
- (4) 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

Human Trafficking and Smuggling Definitions

- 76-5-307. Definitions.
As used in Sections 76-5-308 through [76-5-312] 76-5-310 of this part:
 - (1) "Child" means a person younger than 18 years of age.
 - (2) "Commercial purpose" includes direct or indirect participation in or facilitation of the transportation of one or more persons for the purpose of:
 - (a) charging or obtaining a fee for the transportation; or
 - (b) obtaining, exchanging, or receiving any thing or item of value or an attempt to conduct any of these activities.
 - (3) "Facilitation" regarding transportation under Subsection (2) includes providing:
 - (a) travel arrangement services;
 - (b) payment for the costs of travel; or
 - (c) property that would advance an act of transportation, including a vehicle or other means of transportation, a weapon, false identification, and making funds available including by rent, lease, or sale.
 - (4) "Family member" means a person's parent, grandparent, sibling, or any other person related to the person by consanguinity or affinity to the second degree.
 - (5) "Smuggling of human beings" means the transportation or procurement of transportation for one or more persons by an actor who knows or has reason to know that the person or persons transported or to be transported are not:
 - (a) citizens of the United States;
 - (b) permanent residents, aliens; or
 - (c) otherwise lawfully in this state or entitled to be in this state.]

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

- (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, under Section 76-5-308, of one or more ~~human beings for profit or for a commercial purpose~~ persons is a third degree felony, except under Section 76-5-310 .
- (3) Human trafficking for forced labor or for forced sexual exploitation 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) Under circumstances not amounting to aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1 (4)(b)(i), a person who benefits ~~financially or materially by receiving~~, receives, or exchanges anything of value from knowing participation in:
 - (a) human trafficking for forced labor or for forced sexual exploitation in violation of Section 76-5-308, 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 for forced labor or for forced sexual exploitation, a violation of Section 76-5-308, or human smuggling offense under Section ~~76-5-308~~ 76-5-308, 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 10 or more ~~three to~~ 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 ~~30~~ 30 consecutive days.

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

- (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]~~ actor recruits, harbors, transports, or obtains a child for forced labor or forced sexual exploitation .
- (3) An actor commits aggravated human smuggling if the actor commits human smuggling under ~~[subsection 76-5-309 (2)]~~ Section 76-5-308 and any human being whom the person engages in smuggling is:
 - (a) ~~[younger than 18 years of age]~~ a child; 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]~~ is a first degree felony.
- (b) ~~Aggravated human smuggling is a second degree felony.~~
- (c) 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.

76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.

- (1) As used in this section, "child" means a person under the age of 14.
- (2) A person commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy ~~[upon]~~ on a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, or causes a child to take indecent liberties with the actor or another with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.
- ...
- (4) A person commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (2) 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 person, or sexual performance by the victim before any other person, human trafficking, or human smuggling; or
 - ...

Exploitation of Prostitution Definitions.

- 76-10-1301 Definitions.
- (1) "Child" is a person younger than 18 years of age.

76-10-1303. Patronizing a prostitute.

- (1) A person is guilty of patronizing a prostitute when the person:
 - (a) [he] pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual activity; or
 - (b) [he] enters or remains in a house of prostitution for the purpose of engaging in sexual activity.
- (2) Patronizing a prostitute is a class B misdemeanor, except as provided in Subsection (3) or in Section 76-10-1309 .
- (3) If the patronizing of a prostitute under Subsection (1)(a) involves a child as the other person, a violation of Subsection (1)(a) is a third degree felony.

76-10-1306. Aggravated exploitation of prostitution.

- (1) A person is guilty of aggravated exploitation if:
 - (a) in committing an act of exploiting prostitution, as defined in Section 76-10-1305 , [he] the person uses any force, threat, or fear against any person; [or]
 - (b) the person procured, transported, or persuaded or with whom [he] the person shares the proceeds of prostitution is [under 18 years of age] a child or is the [wife] spouse of the actor[-]; or
 - (c) in the course of committing exploitation of prostitution, a violation of Section 76-10-1305 , the person commits human trafficking or human smuggling, a violation of Section 76-5-308
- (2) Aggravated exploitation of prostitution is a second degree felony [of the second degree], except under Subsection (3).
- (3) Aggravated exploitation of prostitution involving a child is a first degree felony.

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

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

77-38-3. Notification to victims – Initial notice, election to receive subsequent notices – Form of notice – Protected victim information – Pretrial criminal no contact order.

- (13) (a) When a defendant is charged with a felony crime under Sections 76-5-301 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling; Sections 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306 regarding aggravated exploitation of prostitution, the court may, during any court hearing where the defendant is present, issue a pretrial criminal no contact order:
 - (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim directly or through a third party;
 - (ii) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim or any designated family member of the victim directly or through a third party; and
 - (iii) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member of the victim.
- (b) Violation of a pretrial criminal no contact order issued pursuant to this section is a third degree felony.
- (c) (i) The court shall provide to the victim a certified copy of any pretrial criminal no contact order that has been issued if the victim can be located with reasonable effort.
- (ii) The court shall also transmit the pretrial criminal no contact order to the statewide domestic violence network in accordance with Section 78B-7-113.

78B-7-113. Statewide domestic violence network – Peace officers' duties – Prevention of abuse in absence of order -- Limitation of liability.

- (1) (a) Law enforcement units, the Department of Public Safety, and the Administrative Office of the Courts shall utilize statewide procedures to ensure that peace officers at the scene of an alleged violation of a protective order or pretrial criminal no contact order have immediate access to information necessary to verify the existence and terms of that order, and other orders of the court required to be made available on the network by the provisions of this chapter [œ], Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or Section 77-38-3. Those officers shall use every reasonable means to enforce the court's order, in accordance with the requirements and procedures of this chapter [and], Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and Section 77-38-3.
- (b) The Administrative Office of the Courts, in cooperation with the Department of Public Safety and the Criminal Investigations and Technical Services Division, established in Section 53-10-103, shall provide for a single, statewide network containing:
 - (i) all orders for protection issued by a court of this state; and
 - (ii) all other court orders or reports of court action that are required to be available on the network under this chapter [and], Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and Section 77-38-3.

...

REPORTING

- Children victims of Trafficking are not reporting the crimes
 - fear, force, coercion
- Undocumented victims are not reporting crimes
 - Access to Law Enforcement
 - Cultural issues relating to Law Enforcement
- Victims are not visible

Local Enforcement

- Local law enforcement and prosecutorial agencies may lack training and resources
- Rural
 - Large areas to patrol
 - Low visibility to community
- Urban
 - Dense population
 - Breadth of criminal activity, high demand for immediate response and focus on crimes committed (violent felonies, homicides, robbery, etc.)

State Enforcement

- SECURE Strike Force, Utah Attorney General's Office,
 - U.C.A. 67-5-22.7: legislative mandate to combat violent and other major felony crimes associated with illegal immigration and human trafficking.
 - Nine investigators and one prosecution team with resources necessary to ferret out trafficking
 - Currently working on a federal grant to expand investigative and victim resources
- Hotline: 1(801)200-3443

Federal Enforcement

- US Immigration and Custom's Enforcement (ICE)- focus on international trafficking, as would be terrorists and criminals use the same routes and methods to traffic across the US borders
- FBI- in cooperation with National Center for Missing and Exploited Children, focus on domestic trafficking
 - Tip line: 1(800)843-5678
- US Attorney's Office, National Security Section, Forced labor, 18 U.S.C. 1589; Slavery and Involuntary Servitude, 18 U.S.C. 1590; Sex Trafficking, 18 U.S.C. 1591
 - Local contact: Andy Choate, Special Assistant US Attorney
 - (801)325-1427

Utah Trafficking In Persons Task Force

- Multi-Agency Task Force comprising of local, state, and federal advocates, law enforcement, and prosecutors experienced in trafficking and smuggling cases
- Focused on training, prevention, victim services, and providing assistance to law enforcement and prosecution of trafficking cases throughout the state of Utah
- Great resource for staffing a case for input, direction, or even assistance
- Contact: Tammie Atkin, 1(801)281-1206 or email at tatkin@utah.gov

Community

- Bottom line, trafficking and smuggling are occurring at the local level
- Government is reliant on the community to report trafficking and smuggling
- When community reporting is the emphasis, filtering is law enforcements biggest obstacle-
– identifying autonomous sex acts of adults v. sex trade trafficking

INVESTIGATION

- ISSUES:
 - Discerning autonomy from trafficking
 - Adult from children
 - Stationary location or mobile operation
- Identifying/Verifying if there is a victim
- Appropriate Response to threat to victim
- Preservation of Evidence during investigation
- Work with a Prosecutor, team direction

Investigating Human Trafficking

- Piercing the four walls
 - Surveillance, lots of it
 - Preserve it
 - Tracking to learn other locations, residences
 - Follow-up on Johns, where they live, their occupation, their vulnerabilities
 - Undercover/Confidential Informant confirmation of criminal activity
 - Target's Form of Advertisement tracking




