

CRIMINAL OFFENSE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding the offenses of lewdness and sexual battery.

Highlighted Provisions:

This bill:

- ▶ revises the Criminal Code so that the offenses of lewdness, sexual battery, and public urination are each in a separate code section; and
- ▶ provides that a plea of guilty or no contest that is held in abeyance regarding a lewdness offense is the equivalent of a conviction.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-21-501, as last amended by Laws of Utah 2011, Chapter 320

76-6-202, as last amended by Laws of Utah 2011, Chapter 78

76-9-702, as last amended by Laws of Utah 2009, Chapters 354 and 366

77-27-21.5, as last amended by Laws of Utah 2011, Chapters 48, 320 and last amended by Coordination Clause, Laws of Utah 2011, Chapter 48



28 78A-6-105, as last amended by Laws of Utah 2011, Chapter 320

29 ENACTS:

30 76-9-702.1, Utah Code Annotated 1953

31 76-9-702.3, Utah Code Annotated 1953



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

34 Section 1. Section 31A-21-501 is amended to read:

35 **31A-21-501. Definitions.**

36 For purposes of this part:

37 (1) "Applicant" means:

38 (a) in the case of an individual life or accident and health policy, the person who seeks
39 to contract for insurance benefits; or

40 (b) in the case of a group life or accident and health policy, the proposed certificate
41 holder.

42 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an
43 individual who is 16 years of age or older who:

- 44 (a) is or was a spouse of the other party;
- 45 (b) is or was living as if a spouse of the other party;
- 46 (c) is related by blood or marriage to the other party;
- 47 (d) has one or more children in common with the other party; or
- 48 (e) resides or has resided in the same residence as the other party.

49 (3) "Child abuse" means the commission or attempt to commit against a child a
50 criminal offense described in:

- 51 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;
- 52 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;
- 53 [~~(c) Subsections 76-9-702(1) through (4), Lewdness - Sexual battery; or]~~
- 54 (c) Section 76-9-702, Lewdness;
- 55 (d) Section 76-9-702.1, Sexual battery; or
- 56 [~~(d)~~] (e) Section 76-9-702.5, Lewdness involving a child.

57 (4) "Domestic violence" means any criminal offense involving violence or physical
58 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to

59 commit a criminal offense involving violence or physical harm, when committed by one
60 cohabitant against another and includes commission or attempt to commit, any of the following
61 offenses by one cohabitant against another:

- 62 (a) aggravated assault, as described in Section 76-5-103;
- 63 (b) assault, as described in Section 76-5-102;
- 64 (c) criminal homicide, as described in Section 76-5-201;
- 65 (d) harassment, as described in Section 76-5-106;
- 66 (e) electronic communication harassment, as described in Section 76-9-201;
- 67 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
68 76-5-301, 76-5-301.1, and 76-5-302;
- 69 (g) mayhem, as described in Section 76-5-105;
- 70 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Section 76-5b-201;
- 71 (i) stalking, as described in Section 76-5-106.5;
- 72 (j) unlawful detention, as described in Section 76-5-304;
- 73 (k) violation of a protective order or ex parte protective order, as described in Section
74 76-5-108;
- 75 (l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;
- 76 (m) possession of a deadly weapon with intent to assault, as described in Section
77 76-10-507; or
- 78 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
79 person, building, or vehicle, as described in Section 76-10-508.
- 80 (5) "Subject of domestic abuse" means an individual who is, has been, may currently
81 be, or may have been subject to domestic violence or child abuse.

82 Section 2. Section **76-6-202** is amended to read:

83 **76-6-202. Burglary.**

84 (1) An actor is guilty of burglary who enters or remains unlawfully in a building or any
85 portion of a building with intent to commit:

- 86 (a) a felony;
- 87 (b) theft;
- 88 (c) an assault on any person;
- 89 (d) lewdness, a violation of [~~Subsection 76-9-702(1)~~] Section 76-9-702;

90 (e) sexual battery, a violation of [~~Subsection 76-9-702(3)~~] Section 76-9-702.1;

91 (f) lewdness involving a child, in violation of Section 76-9-702.5; or

92 (g) voyeurism under Section 76-9-702.7.

93 (2) Burglary is a third degree felony unless it was committed in a dwelling, in which
94 event it is a second degree felony.

95 (3) A violation of this section is a separate offense from any of the offenses listed in
96 Subsections (1)(a) through (g), and which may be committed by the actor while in the building.

97 Section 3. Section **76-9-702** is amended to read:

98 **76-9-702. Lewdness.**

99 (1) A person is guilty of lewdness if the person under circumstances not amounting to
100 rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or an
101 attempt to commit any of these offenses, performs any of the following acts in a public place or
102 under circumstances which the person should know will likely cause affront or alarm to, on, or
103 in the presence of another who is 14 years of age or older:

104 (a) an act of sexual intercourse or sodomy;

105 (b) exposes his or her genitals, the female breast below the top of the areola, the
106 buttocks, the anus, or the pubic area;

107 (c) masturbates; or

108 (d) any other act of lewdness.

109 (2) (a) A person convicted the first or second time of a violation of Subsection (1) is
110 guilty of a class B misdemeanor, except under Subsection (2)(b).

111 (b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony
112 if at the time of the violation:

113 (i) the person is a sex offender as defined in Section 77-27-21.7;

114 (ii) the person has been previously convicted two or more times of violating Subsection
115 (1); or

116 (iii) the person has previously been convicted of a violation of Subsection (1) and has
117 also previously been convicted of a violation of Section 76-9-702.5.

118 [~~(3) A person is guilty of sexual battery if the person under circumstances not
119 amounting to rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy
120 upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child,~~

121 ~~aggravated sexual assault, or an attempt to commit any of these offenses intentionally touches,~~
 122 ~~whether or not through clothing, the anus, buttocks, or any part of the genitals of another~~
 123 ~~person, or the breast of a female, and the actor's conduct is under circumstances the actor~~
 124 ~~knows or should know will likely cause affront or alarm to the person touched.]~~

125 ~~[(4) Sexual battery is a class A misdemeanor.]~~

126 ~~[(5) A person is guilty of public urination if the person urinates or defecates:]~~

127 ~~[(a) in a public place, other than a public rest room; and]~~

128 ~~[(b) under circumstances which the person should know will likely cause affront or~~
 129 ~~alarm to another.]~~

130 ~~[(6) Public urination is a class C misdemeanor.]~~

131 (c) For purposes of this Subsection (2) only, a plea of guilty or nolo contendere to a
 132 charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in
 133 Abeyance, is the equivalent of a conviction.

134 (d) Subsection (2)(a) also applies if the charge has been subsequently reduced or
 135 dismissed in accordance with the plea in abeyance agreement.

136 ~~[(7)] (3) A woman's breast feeding, including breast feeding in any location where the~~
 137 ~~woman otherwise may rightfully be, does not under any circumstance constitute a lewd act,~~
 138 ~~irrespective of whether or not the breast is covered during or incidental to feeding.~~

139 Section 4. Section **76-9-702.1** is enacted to read:

140 **76-9-702.1. Sexual battery.**

141 (1) A person is guilty of sexual battery if the person, under circumstances not
 142 amounting to an offense under Subsection (2), intentionally touches, whether or not through
 143 clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a
 144 female person, and the actor's conduct is under circumstances the actor knows or should know
 145 will likely cause affront or alarm to the person touched.

146 (2) Offenses referred to in Subsection (1) are:

147 (a) rape, Section 76-5-402;

148 (b) rape of a child, Section 76-5-402.1;

149 (c) object rape, Section 76-5-402.2;

150 (d) object rape of a child, Section 76-5-402.3;

151 (e) forcible sodomy, Subsection 76-5-403(2);

- 152 (f) sodomy on a child, Section 76-5-403.1;
- 153 (g) forcible sexual abuse, Section 76-5-404;
- 154 (h) sexual abuse of a child, Subsection 76-5-404.1(2);
- 155 (i) aggravated sexual abuse of a child, Subsection 76-5-404.1(4);
- 156 (j) aggravated sexual assault, Section 76-5-405; and
- 157 (k) an attempt to commit any offense under this Subsection (2).
- 158 (3) Sexual battery is a class A misdemeanor.

Section 5. Section **76-9-702.3** is enacted to read:

76-9-702.3. Public urination.

(1) A person is guilty of public urination if the person urinates or defecates:

- 162 (a) in a public place, other than a public rest room; and
- 163 (b) under circumstances which the person should know will likely cause affront or
- 164 alarm to another.

(2) Public urination is a class C misdemeanor.

Section 6. Section **77-27-21.5** is amended to read:

**77-27-21.5. Sex and kidnap offenders -- Registration -- Information system --
Law enforcement and courts to report -- Penalty -- Effect of expungement.**

(1) As used in this section:

- 170 (a) "Business day" means a day on which state offices are open for regular business.
- 171 (b) "Department" means the Department of Corrections.
- 172 (c) "Division" means the Division of Juvenile Justice Services.
- 173 (d) "Employed" or "carries on a vocation" includes employment that is full time or part
- 174 time, whether financially compensated, volunteered, or for the purpose of government or
- 175 educational benefit.
- 176 (e) "Indian Country" means:
- 177 (i) all land within the limits of any Indian reservation under the jurisdiction of the
- 178 United States government, regardless of the issuance of any patent, and includes rights-of-way
- 179 running through the reservation;
- 180 (ii) all dependent Indian communities within the borders of the United States whether
- 181 within the original or subsequently acquired territory, and whether or not within the limits of a
- 182 state; and

183 (iii) all Indian allotments, including the Indian allotments to which the Indian titles to
184 have not been extinguished, including rights-of-way running through the allotments.

185 (f) "Jurisdiction" means any state, Indian Country, United States Territory, or any
186 property under the jurisdiction of the United States military, Canada, the United Kingdom,
187 Australia, or New Zealand.

188 (g) "Kidnap offender" means any person other than a natural parent of the victim who:

189 (i) has been convicted in this state of a violation of:

190 (A) Section 76-5-301, Subsection (1)(c) or (d), kidnapping;

191 (B) Section 76-5-301.1, child kidnapping;

192 (C) Section 76-5-302, aggravated kidnapping;

193 (D) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or

194 (E) attempting, soliciting, or conspiring to commit any felony offense listed in

195 Subsections (1)(g)(i)(A) through (D);

196 (ii) has been convicted of any crime, or an attempt, solicitation, or conspiracy to
197 commit a crime in another jurisdiction, including any state, federal, or military court that is
198 substantially equivalent to the offenses listed in Subsection (1)(g)(i) and who is:

199 (A) a Utah resident; or

200 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of
201 10 or more days, regardless of whether or not the offender intends to permanently reside in this
202 state;

203 (iii) (A) is required to register as an offender in any other jurisdiction, or who is
204 required to register as an offender by any state, federal, or military court; and

205 (B) in any 12 month period, is in this state for a total of 10 or more days, regardless of
206 whether or not the offender intends to permanently reside in this state;

207 (iv) is a nonresident regularly employed or working in this state, or who is a student in
208 this state, and was convicted of one or more offenses listed in Subsection (1)(g), or any
209 substantially equivalent offense in another jurisdiction, or as a result of the conviction, is
210 required to register in the person's state of residence;

211 (v) is found not guilty by reason of insanity in this state or in any other jurisdiction of
212 one or more offenses listed in Subsection (1)(g); or

213 (vi) is adjudicated delinquent based on one or more offenses listed in Subsection

214 (1)(g)(i) and who has been committed to the division for secure confinement and remains in the
215 division's custody 30 days prior to the person's 21st birthday.

216 (h) "Natural parent" means a minor's biological or adoptive parent, and includes the
217 minor's noncustodial parent.

218 (i) "Offender" means a kidnap offender as defined in Subsection (1)(g) or a sex
219 offender as defined in Subsection (1)(n).

220 (j) "Online identifier" or "Internet identifier":

221 (i) means any electronic mail, chat, instant messenger, social networking, or similar
222 name used for Internet communication; and

223 (ii) does not include date of birth, Social Security number, PIN number, or Internet
224 passwords.

225 (k) "Primary residence" means the location where the offender regularly resides, even
226 if the offender intends to move to another location or return to another location at any future
227 date.

228 (l) "Register" means to comply with the requirements of this section and administrative
229 rules of the department made under this section.

230 (m) "Secondary residence" means any real property that the offender owns or has a
231 financial interest in, or any location where, in any 12 month period, the offender stays
232 overnight a total of 10 or more nights when not staying at the offender's primary residence.

233 (n) "Sex offender" means any person:

234 (i) convicted in this state of:

235 (A) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

236 (B) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,
237 2011;

238 (C) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

239 (D) Section 76-5-401.1, sexual abuse of a minor;

240 (E) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

241 (F) Section 76-5-402, rape;

242 (G) Section 76-5-402.1, rape of a child;

243 (H) Section 76-5-402.2, object rape;

244 (I) Section 76-5-402.3, object rape of a child;

- 245 (J) a felony violation of Section 76-5-403, forcible sodomy;
- 246 (K) Section 76-5-403.1, sodomy on a child;
- 247 (L) Section 76-5-404, forcible sexual abuse;
- 248 (M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 249 (N) Section 76-5-405, aggravated sexual assault;
- 250 (O) Section 76-5-412, custodial sexual relations, when the person in custody is younger
251 than 18 years of age, if the offense is committed on or after May 10, 2011;
- 252 (P) Section 76-5b-201, sexual exploitation of a minor;
- 253 (Q) Section 76-7-102, incest;
- 254 (R) [~~Subsection 76-9-702(1)~~] Section 76-9-702, lewdness, if the person has been
255 convicted of the offense four or more times;
- 256 (S) [~~Subsection 76-9-702(3)~~] Section 76-9-702.1, sexual battery, if the person has been
257 convicted of the offense four or more times;
- 258 (T) any combination of convictions of [~~Subsection 76-9-702(1)~~] Section 76-9-702,
259 lewdness, and of [~~Subsection 76-9-702(3)~~] Section 76-9-702.1, sexual battery, that total four or
260 more convictions;
- 261 (U) Section 76-9-702.5, lewdness involving a child;
- 262 (V) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
- 263 (W) Section 76-10-1306, aggravated exploitation of prostitution; or
- 264 (X) attempting, soliciting, or conspiring to commit any felony offense listed in
265 Subsection (1)(n)(i);
- 266 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
267 commit a crime in another jurisdiction, including any state, federal, or military court that is
268 substantially equivalent to the offenses listed in Subsection (1)(n)(i) and who is:
- 269 (A) a Utah resident; or
- 270 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of
271 10 or more days, regardless of whether the offender intends to permanently reside in this state;
- 272 (iii) (A) who is required to register as an offender in any other jurisdiction, or who is
273 required to register as an offender by any state, federal, or military court; and
- 274 (B) who, in any 12 month period, is in the state for a total of 10 or more days,
275 regardless of whether or not the offender intends to permanently reside in this state;

276 (iv) who is a nonresident regularly employed or working in this state or who is a
277 student in this state and was convicted of one or more offenses listed in Subsection (1)(n)(i), or
278 any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is
279 required to register in the person's jurisdiction of residence;

280 (v) who is found not guilty by reason of insanity in this state, or in any other
281 jurisdiction of one or more offenses listed in Subsection (1)(n)(i); or

282 (vi) who is adjudicated delinquent based on one or more offenses listed in Subsection
283 (1)(n)(i) and who has been committed to the division for secure confinement and remains in the
284 division's custody 30 days prior to the person's 21st birthday.

285 (o) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
286 any jurisdiction.

287 (2) The department, to assist in investigating kidnapping and sex-related crimes, and in
288 apprehending offenders, shall:

289 (a) develop and operate a system to collect, analyze, maintain, and disseminate
290 information on offenders and sex and kidnap offenses;

291 (b) make information listed in Subsection (27) available to the public; and

292 (c) share information provided by an offender under this section that may not be made
293 available to the public under Subsection (27), but only:

294 (i) for the purposes under this Subsection (2); or

295 (ii) in accordance with Section 63G-2-206.

296 (3) Any law enforcement agency shall, in the manner prescribed by the department,
297 inform the department of:

298 (a) the receipt of a report or complaint of an offense listed in Subsection (1)(g) or (n),
299 within three business days; and

300 (b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(g) or
301 (n), within five business days.

302 (4) Upon convicting a person of any of the offenses listed in Subsection (1)(g) or (n),
303 the convicting court shall within three business days forward a copy of the judgment and
304 sentence to the department.

305 (5) An offender in the custody of the department shall be registered by agents of the
306 department upon:

- 307 (a) placement on probation;
- 308 (b) commitment to a secure correctional facility operated by or under contract to the
- 309 department;
- 310 (c) release from confinement to parole status, termination or expiration of sentence, or
- 311 escape;
- 312 (d) entrance to and release from any community-based residential program operated by
- 313 or under contract to the department; or
- 314 (e) termination of probation or parole.
- 315 (6) An offender who is not in the custody of the department and who is confined in a
- 316 correctional facility not operated by or under contract to the department shall be registered with
- 317 the department by the sheriff of the county in which the offender is confined, upon:
 - 318 (a) commitment to the correctional facility; and
 - 319 (b) release from confinement.
- 320 (7) An offender in the custody of the division shall be registered with the department
- 321 by the division prior to release from custody.
- 322 (8) An offender committed to a state mental hospital shall be registered with the
- 323 department by the hospital upon admission and upon discharge.
- 324 (9) (a) (i) A municipal or county law enforcement agency shall register an offender
- 325 who resides within the agency's jurisdiction and is not under the supervision of the Division of
- 326 Adult Probation and Parole within the department.
- 327 (ii) In order to conduct offender registration under this section, the agency shall ensure
- 328 the agency staff responsible for registration:
 - 329 (A) has received initial training by the department and has been certified by the
 - 330 department as qualified and authorized to conduct registrations and enter offender registration
 - 331 information into the registry database; and
 - 332 (B) certify annually with the department.
- 333 (b) (i) When the department receives offender registration information regarding a
- 334 change of an offender's primary residence location, the department shall within five days
- 335 electronically notify the law enforcement agencies that have jurisdiction over the area where:
 - 336 (A) the residence that the offender is leaving is located; and
 - 337 (B) the residence to which the offender is moving is located.

338 (ii) The department shall provide notification under this Subsection (9)(b) if the
339 offender's change of address is between law enforcement agency jurisdictions, or is within one
340 jurisdiction.

341 (c) The department shall make available to offenders required to register under this
342 section the name of the agency, whether it is a local law enforcement agency or the department,
343 that the offender should contact to register, the location for registering, and the requirements of
344 registration.

345 (10) An offender convicted by any other jurisdiction is required to register under
346 Subsection (1)(g) or (n) and Subsection (12) and shall register with the department within 10
347 days of entering the state, regardless of the offender's length of stay.

348 (11) (a) An offender required to register under Subsection (1)(g) or (n) who is under
349 supervision by the department shall register with Division of Adult Probation and Parole.

350 (b) An offender required to register under Subsection (1)(g) or (n) who is no longer
351 under supervision by the department shall register with the police department or sheriff's office
352 that has jurisdiction over the area where the offender resides.

353 (12) (a) Except as provided in Subsections (12)(b), (c), and (d), an offender shall, for
354 the duration of the sentence and for 10 years after termination of sentence or custody of the
355 division, register every year during the month of the offender's birth, during the month that is
356 the sixth month after the offender's birth month, and also within three business days of every
357 change of the offender's primary residence, any secondary residences, place of employment,
358 vehicle information, or educational information required to be submitted under Subsection
359 (14).

360 (b) Except as provided Subsections (12)(c) and (d), an offender who is convicted in
361 another jurisdiction of an offense listed in Subsection (1)(g)(i) or (n)(i), a substantially similar
362 offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

363 (i) register for the time period, and in the frequency, required by the jurisdiction where
364 the offender was convicted if that jurisdiction's registration period or registration frequency
365 requirement for the offense that the offender was convicted of is greater than the 10 years from
366 completion of the sentence registration period that is required under Subsection (12)(a), or is
367 more frequent than every six months; or

368 (ii) register in accordance with the requirements of Subsection (12)(a), if the

369 jurisdiction's registration period or frequency requirement for the offense that the offender was
370 convicted of is less than the registration period required under Subsection (12)(a), or is less
371 frequent than every six months.

372 (c) (i) (A) An offender convicted as an adult of any of the offenses listed in Subsection
373 (12)(c)(ii) shall, for the offender's lifetime, register every year during the month of the
374 offender's birth, during the month that is the sixth month after the offender's birth month, and
375 also within three business days of every change of the offender's primary residence, any
376 secondary residences, place of employment, vehicle information, or educational information
377 required to be submitted under Subsection (14).

378 (B) This registration requirement is not subject to exemptions and may not be
379 terminated or altered during the offender's lifetime.

380 (ii) Offenses referred to in Subsection (12)(c)(i) are:

381 (A) any offense listed in Subsection (1)(g) or (n) if, at the time of the conviction, the
382 offender has previously been convicted of an offense listed in Subsection (1)(g) or (n) or has
383 previously been required to register as a sex offender for an offense committed as a juvenile;

384 (B) a conviction for any of the following offenses, including attempting, soliciting, or
385 conspiring to commit any felony of:

386 (I) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of
387 the victim;

388 (II) Section 76-5-402, rape;

389 (III) Section 76-5-402.1, rape of a child;

390 (IV) Section 76-5-402.2, object rape;

391 (V) Section 76-5-402.3, object rape of a child;

392 (VI) Section 76-5-403.1, sodomy on a child;

393 (VII) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or

394 (VIII) Section 76-5-405, aggravated sexual assault;

395 (C) Section 76-4-401, a felony violation of enticing a minor over the Internet;

396 (D) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent
397 of the victim;

398 (E) Section 76-5-403, forcible sodomy;

399 (F) Section 76-5-404.1, sexual abuse of a child;

400 (G) Section 76-5b-201, sexual exploitation of a minor; or

401 (H) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10,
402 2011.

403 (d) Notwithstanding Subsections (12)(a), (b), and (c), an offender who is confined in a
404 secure facility or in a state mental hospital is not required to register during the period of
405 confinement.

406 (e) An offender who is required to register under this Subsection (12) shall surrender
407 the offender's license, certificate, or identification card as required under Subsection
408 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as
409 provided under Section 53-3-205 or 53-3-804.

410 (f) A sex offender who violates Section 77-27-21.8 while required to register under this
411 section shall register for an additional five years subsequent to the registration period otherwise
412 required under this section.

413 (13) An agency in the state that registers an offender on probation, an offender who has
414 been released from confinement to parole status or termination, or an offender whose sentence
415 has expired shall inform the offender of the duty to comply with:

416 (a) the continuing registration requirements of this section during the period of
417 registration required in Subsection (12), including:

418 (i) notification to the state agencies in the states where the registrant presently resides
419 and plans to reside when moving across state lines;

420 (ii) verification of address at least every 60 days pursuant to a parole agreement for
421 lifetime parolees; and

422 (iii) notification to the out-of-state agency where the offender is living, whether or not
423 the offender is a resident of that state; and

424 (b) the driver license certificate or identification card surrender requirement under
425 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or
426 53-3-804.

427 (14) An offender shall provide the department or the registering entity with the
428 following information:

429 (a) all names and aliases by which the offender is or has been known;

430 (b) the addresses of the offender's primary and secondary residences;

- 431 (c) a physical description, including the offender's date of birth, height, weight, eye and
432 hair color;
- 433 (d) the make, model, color, year, plate number, and vehicle identification number of
434 any vehicle or vehicles the offender owns or regularly drives;
- 435 (e) a current photograph of the offender;
- 436 (f) a set of fingerprints, if one has not already been provided;
- 437 (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not
438 already been provided;
- 439 (h) telephone numbers and any other designations used by the offender for routing or
440 self-identification in telephonic communications from fixed locations or cellular telephones;
- 441 (i) Internet identifiers and the addresses the offender uses for routing or
442 self-identification in Internet communications or postings;
- 443 (j) the name and Internet address of all websites on which the offender is registered
444 using an online identifier, including all online identifiers used to access those websites;
- 445 (k) a copy of the offender's passport, if a passport has been issued to the offender;
- 446 (l) if the offender is an alien, all documents establishing the offender's immigration
447 status;
- 448 (m) all professional licenses that authorize the offender to engage in an occupation or
449 carry out a trade or business, including any identifiers, such as numbers;
- 450 (n) each educational institution in Utah at which the offender is employed, carries on a
451 vocation, or is a student, and any change of enrollment or employment status of the offender at
452 any educational institution;
- 453 (o) the name and the address of any place where the offender is employed or will be
454 employed;
- 455 (p) the name and the address of any place where the offender works as a volunteer or
456 will work as a volunteer; and
- 457 (q) the offender's Social Security number.
- 458 (15) The department shall:
- 459 (a) provide the following additional information when available:
- 460 (i) the crimes the offender has been convicted of or adjudicated delinquent for;
- 461 (ii) a description of the offender's primary and secondary targets; and

462 (iii) any other relevant identifying information as determined by the department;

463 (b) maintain the Sex Offender and Kidnap Offender Notification and Registration
464 website; and

465 (c) ensure that the registration information collected regarding an offender's enrollment
466 or employment at an educational institution is:

467 (i) (A) promptly made available to any law enforcement agency that has jurisdiction
468 where the institution is located if the educational institution is an institution of higher
469 education; or

470 (B) promptly made available to the district superintendent of the school district where
471 the offender is enrolled if the educational institution is an institution of primary education; and

472 (ii) entered into the appropriate state records or data system.

473 (16) (a) An offender who knowingly fails to register under this section or provides
474 false or incomplete information is guilty of:

475 (i) a third degree felony and shall be sentenced to serve a term of incarceration for not
476 less than 90 days and also at least one year of probation if:

477 (A) the offender is required to register for a felony conviction or adjudicated delinquent
478 for what would be a felony if the juvenile were an adult of an offense listed in Subsection
479 (1)(g)(i) or (n)(i); or

480 (B) the offender is required to register for the offender's lifetime under Subsection
481 (12)(c); or

482 (ii) a class A misdemeanor and shall be sentenced to serve a term of incarceration for
483 not fewer than 90 days and also at least one year of probation if the offender is required to
484 register for a misdemeanor conviction or is adjudicated delinquent for what would be a
485 misdemeanor if the juvenile were an adult of an offense listed in Subsection (1)(g)(i) or (n)(i).

486 (b) Neither the court nor the Board of Pardons and Parole may release a person who
487 violates this section from serving the term required under Subsection (16)(a). This Subsection
488 (16)(b) supersedes any other provision of the law contrary to this section.

489 (c) The offender shall register for an additional year for every year in which the
490 offender does not comply with the registration requirements of this section.

491 (17) Notwithstanding Title 63G, Chapter 2, Government Records Access and
492 Management Act, information under Subsection (15) that is collected and released under

493 Subsection (27) is public information, unless otherwise restricted under Subsection (2)(c).

494 (18) (a) If an offender is to be temporarily sent outside a secure facility in which the
495 offender is confined on any assignment, including, without limitation, firefighting or disaster
496 control, the official who has custody of the offender shall, within a reasonable time prior to
497 removal from the secure facility, notify the local law enforcement agencies where the
498 assignment is to be filled.

499 (b) This Subsection (18) does not apply to any person temporarily released under guard
500 from the institution in which the person is confined.

501 (19) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, a person convicted
502 of any offense listed in Subsection (1)(g) or (n) is not relieved from the responsibility to
503 register as required under this section.

504 (20) Notwithstanding Section 42-1-1, an offender:

505 (a) may not change the offender's name:

506 (i) while under the jurisdiction of the department; and

507 (ii) until the registration requirements of this statute have expired; and

508 (b) may not change the offender's name at any time, if registration is for life under
509 Subsection (12)(c).

510 (21) The department may make administrative rules necessary to implement this
511 section, including:

512 (a) the method for dissemination of the information; and

513 (b) instructions to the public regarding the use of the information.

514 (22) Any information regarding the identity or location of a victim shall be redacted by
515 the department from information provided under Subsections (14) and (15).

516 (23) This section does not create or impose any duty on any person to request or obtain
517 information regarding any offender from the department.

518 (24) The department shall maintain a Sex Offender and Kidnap Offender Notification
519 and Registration website on the Internet, which shall contain a disclaimer informing the public:

520 (a) the information contained on the site is obtained from offenders and the department
521 does not guarantee its accuracy or completeness;

522 (b) members of the public are not allowed to use the information to harass or threaten
523 offenders or members of their families; and

524 (c) harassment, stalking, or threats against offenders or their families are prohibited and
525 doing so may violate Utah criminal laws.

526 (25) The Sex Offender and Kidnap Offender Notification and Registration website
527 shall be indexed by both the surname of the offender and by postal codes.

528 (26) The department shall construct the Sex Offender Notification and Registration
529 website so that users, before accessing registry information, must indicate that they have read
530 the disclaimer, understand it, and agree to comply with its terms.

531 (27) The Sex Offender and Kidnap Offender Notification and Registration website
532 shall include the following registry information:

533 (a) all names and aliases by which the offender is or has been known, but not including
534 any online or Internet identifiers;

535 (b) the addresses of the offender's primary, secondary, and temporary residences;

536 (c) a physical description, including the offender's date of birth, height, weight, and eye
537 and hair color;

538 (d) the make, model, color, year, and plate number of any vehicle or vehicles the
539 offender owns or regularly drives;

540 (e) a current photograph of the offender;

541 (f) a list of all professional licenses that authorize the offender to engage in an
542 occupation or carry out a trade or business;

543 (g) each educational institution in Utah at which the offender is employed, carries on a
544 vocation, or is a student;

545 (h) a list of places where the offender works as a volunteer; and

546 (i) the crimes listed in Subsections (1)(g) and(n) that the offender has been convicted of
547 or for which the offender has been adjudicated delinquent in juvenile court.

548 (28) The department, its personnel, and any individual or entity acting at the request or
549 upon the direction of the department are immune from civil liability for damages for good faith
550 compliance with this section and will be presumed to have acted in good faith by reporting
551 information.

552 (29) The department shall redact information that, if disclosed, could reasonably
553 identify a victim.

554 (30) (a) Each offender required to register under Subsection (12) shall, in the month of

555 the offender's birth:

556 (i) pay to the department an annual fee of \$100 each year the offender is subject to the
557 registration requirements of this section; and

558 (ii) pay to the registering agency, if it is an agency other than the Department of
559 Corrections, an annual fee of not more than \$25, which may be assessed by that agency for
560 providing registration.

561 (b) Notwithstanding Subsection (30)(a), an offender who is confined in a secure facility
562 or in a state mental hospital is not required to pay the annual fee.

563 (c) The department shall deposit fees under this Subsection (30) in the General Fund as
564 a dedicated credit, to be used by the department for maintaining the offender registry under this
565 section and monitoring offender registration compliance, including the costs of:

566 (i) data entry;

567 (ii) processing registration packets;

568 (iii) updating registry information;

569 (iv) ensuring offender compliance with registration requirements under this section;

570 and

571 (v) apprehending offenders who are in violation of the offender registration
572 requirements under this section.

573 (31) Notwithstanding Subsections (2)(c) and (14)(i) and (j), an offender is not required
574 to provide the department with:

575 (a) the offender's online identifier and password used exclusively for the offender's
576 employment on equipment provided by an employer and used to access the employer's private
577 network; or

578 (b) online identifiers for the offender's financial accounts, including any bank,
579 retirement, or investment accounts.

580 Section 7. Section **78A-6-105** is amended to read:

581 **78A-6-105. Definitions.**

582 As used in this chapter:

583 (1) (a) "Abuse" means:

584 (i) nonaccidental harm of a child;

585 (ii) threatened harm of a child;

- 586 (iii) sexual exploitation; or
- 587 (iv) sexual abuse.
- 588 (b) "Abuse" does not include:
- 589 (i) reasonable discipline or management of a child, including withholding privileges;
- 590 (ii) conduct described in Section 76-2-401; or
- 591 (iii) the use of reasonable and necessary physical restraint or force on a child:
- 592 (A) in self-defense;
- 593 (B) in defense of others;
- 594 (C) to protect the child; or
- 595 (D) to remove a weapon in the possession of a child for any of the reasons described in
- 596 Subsections (1)(b)(iii)(A) through (C).
- 597 (2) "Abused child" means a child who has been subjected to abuse.
- 598 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
- 599 alleged in the petition have been proved.
- 600 (4) "Adult" means a person 18 years of age or over, except that a person 18 years or
- 601 over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall
- 602 be referred to as a minor.
- 603 (5) "Board" means the Board of Juvenile Court Judges.
- 604 (6) "Child" means a person under 18 years of age.
- 605 (7) "Child placement agency" means:
- 606 (a) a private agency licensed to receive a child for placement or adoption under this
- 607 code; or
- 608 (b) a private agency that receives a child for placement or adoption in another state,
- 609 which agency is licensed or approved where such license or approval is required by law.
- 610 (8) "Clandestine laboratory operation" is as defined in Section 58-37d-3.
- 611 (9) "Commit" means, unless specified otherwise:
- 612 (a) with respect to a child, to transfer legal custody; and
- 613 (b) with respect to a minor who is at least 18 years of age, to transfer custody.
- 614 (10) "Court" means the juvenile court.
- 615 (11) "Dependent child" includes a child who is homeless or without proper care
- 616 through no fault of the child's parent, guardian, or custodian.

617 (12) "Deprivation of custody" means transfer of legal custody by the court from a
618 parent or the parents or a previous legal custodian to another person, agency, or institution.

619 (13) "Detention" means home detention and secure detention as defined in Section
620 62A-7-101 for the temporary care of a minor who requires secure custody in a physically
621 restricting facility:

622 (a) pending court disposition or transfer to another jurisdiction; or

623 (b) while under the continuing jurisdiction of the court.

624 (14) "Division" means the Division of Child and Family Services.

625 (15) "Formal referral" means a written report from a peace officer or other person
626 informing the court that a minor is or appears to be within the court's jurisdiction and that a
627 petition may be filed.

628 (16) "Group rehabilitation therapy" means psychological and social counseling of one
629 or more persons in the group, depending upon the recommendation of the therapist.

630 (17) "Guardianship of the person" includes the authority to consent to:

631 (a) marriage;

632 (b) enlistment in the armed forces;

633 (c) major medical, surgical, or psychiatric treatment; or

634 (d) legal custody, if legal custody is not vested in another person, agency, or institution.

635 (18) "Habitual truant" is as defined in Section 53A-11-101.

636 (19) "Harm" means:

637 (a) physical, emotional, or developmental injury or damage;

638 (b) sexual abuse; or

639 (c) sexual exploitation.

640 (20) (a) "Incest" means engaging in sexual intercourse with a person whom the
641 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
642 nephew, niece, or first cousin.

643 (b) The relationships described in Subsection (20)(a) include:

644 (i) blood relationships of the whole or half blood, without regard to legitimacy;

645 (ii) relationships of parent and child by adoption; and

646 (iii) relationships of stepparent and stepchild while the marriage creating the
647 relationship of a stepparent and stepchild exists.

648 (21) "Legal custody" means a relationship embodying the following rights and duties:

649 (a) the right to physical custody of the minor;

650 (b) the right and duty to protect, train, and discipline the minor;

651 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary

652 medical care;

653 (d) the right to determine where and with whom the minor shall live; and

654 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

655 (22) "Minor" means:

656 (a) a child; or

657 (b) a person who is:

658 (i) at least 18 years of age and younger than 21 years of age; and

659 (ii) under the jurisdiction of the juvenile court.

660 (23) "Molestation" means that a person, with the intent to arouse or gratify the sexual

661 desire of any person:

662 (a) touches the anus or any part of the genitals of a child;

663 (b) takes indecent liberties with a child; or

664 (c) causes a child to take indecent liberties with the perpetrator or another.

665 (24) "Natural parent" means a minor's biological or adoptive parent, and includes the

666 minor's noncustodial parent.

667 (25) (a) "Neglect" means:

668 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe

669 Relinquishment of a Newborn Child;

670 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,

671 guardian, or custodian;

672 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary

673 subsistence, education, or medical care, or any other care necessary for the child's health,

674 safety, morals, or well-being; or

675 (iv) a child at risk of being neglected or abused because another child in the same home

676 is neglected or abused.

677 (b) The aspect of neglect relating to education, described in Subsection (25)(a)(iii),

678 means that, after receiving a notice of compulsory education violation under Section

679 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school
680 authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent
681 or guardian fails to make a good faith effort to ensure that the child receives an appropriate
682 education.

683 (c) A parent or guardian legitimately practicing religious beliefs and who, for that
684 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

685 (d) (i) Notwithstanding Subsection (25)(a), a health care decision made for a child by
686 the child's parent or guardian does not constitute neglect unless the state or other party to the
687 proceeding shows, by clear and convincing evidence, that the health care decision is not
688 reasonable and informed.

689 (ii) Nothing in Subsection (25)(d)(i) may prohibit a parent or guardian from exercising
690 the right to obtain a second health care opinion.

691 (26) "Neglected child" means a child who has been subjected to neglect.

692 (27) "Nonjudicial adjustment" means closure of the case by the assigned probation
693 officer without judicial determination upon the consent in writing of:

694 (a) the assigned probation officer; and

695 (b) (i) the minor; or

696 (ii) the minor and the minor's parent, legal guardian, or custodian.

697 (28) "Physical abuse" means abuse that results in physical injury or damage to a child.

698 (29) "Probation" means a legal status created by court order following an adjudication
699 on the ground of a violation of law or under Section 78A-6-103, whereby the minor is
700 permitted to remain in the minor's home under prescribed conditions and under supervision by
701 the probation department or other agency designated by the court, subject to return to the court
702 for violation of any of the conditions prescribed.

703 (30) "Protective supervision" means a legal status created by court order following an
704 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
705 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
706 dependency is provided by the probation department or other agency designated by the court.

707 (31) (a) "Residual parental rights and duties" means those rights and duties remaining
708 with the parent after legal custody or guardianship, or both, have been vested in another person
709 or agency, including:

- 710 (i) the responsibility for support;
- 711 (ii) the right to consent to adoption;
- 712 (iii) the right to determine the child's religious affiliation; and
- 713 (iv) the right to reasonable parent-time unless restricted by the court.
- 714 (b) If no guardian has been appointed, "residual parental rights and duties" also include
- 715 the right to consent to:
 - 716 (i) marriage;
 - 717 (ii) enlistment; and
 - 718 (iii) major medical, surgical, or psychiatric treatment.
- 719 (32) "Secure facility" means any facility operated by or under contract with the
- 720 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
- 721 youth offenders committed to the division for custody and rehabilitation.
- 722 (33) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
- 723 child.
- 724 (34) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
- 725 child.
- 726 (35) "Sexual abuse" means:
 - 727 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
 - 728 directed towards a child; or
 - 729 (b) engaging in any conduct with a child that would constitute an offense under any of
 - 730 the following, regardless of whether the person who engages in the conduct is actually charged
 - 731 with, or convicted of, the offense:
 - 732 (i) Title 76, Chapter 5, Part 4, Sexual Offenses;
 - 733 (ii) child bigamy, Section 76-7-101.5;
 - 734 (iii) incest, Section 76-7-102;
 - 735 (iv) lewdness [~~or sexual battery~~], Section 76-9-702;
 - 736 (v) sexual battery, Section 76-9-702.1;
 - 737 [~~(v)~~] (vi) lewdness involving a child, Section 76-9-702.5; or
 - 738 [~~(vi)~~] (vii) voyeurism, Section 76-9-702.7.
 - 739 (36) "Sexual exploitation" means knowingly:
 - 740 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

- 741 (i) pose in the nude for the purpose of sexual arousal of any person; or
- 742 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
- 743 filming, recording, or displaying in any way the sexual or simulated sexual conduct;
- 744 (b) displaying, distributing, possessing for the purpose of distribution, or selling
- 745 material depicting a child:
 - 746 (i) in the nude, for the purpose of sexual arousal of any person; or
 - 747 (ii) engaging in sexual or simulated sexual conduct; or
 - 748 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
 - 749 Sexual Exploitation of a Minor, regardless of whether the person who engages in the conduct is
 - 750 actually charged with, or convicted of, the offense.
- 751 (37) "Shelter" means the temporary care of a child in a physically unrestricted facility
- 752 pending court disposition or transfer to another jurisdiction.
- 753 (38) "State supervision" means a disposition that provides a more intensive level of
- 754 intervention than standard probation but is less intensive or restrictive than a community
- 755 placement with the Division of Juvenile Justice Services.
- 756 (39) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
- 757 substances.
- 758 (40) "Substantiated" is as defined in Section 62A-4a-101.
- 759 (41) "Supported" is as defined in Section 62A-4a-101.
- 760 (42) "Termination of parental rights" means the permanent elimination of all parental
- 761 rights and duties, including residual parental rights and duties, by court order.
- 762 (43) "Therapist" means:
 - 763 (a) a person employed by a state division or agency for the purpose of conducting
 - 764 psychological treatment and counseling of a minor in its custody; or
 - 765 (b) any other person licensed or approved by the state for the purpose of conducting
 - 766 psychological treatment and counseling.
- 767 (44) "Unsubstantiated" is as defined in Section 62A-4a-101.
- 768 (45) "Without merit" is as defined in Section 62A-4a-101.

Legislative Review Note
as of 1-13-12 6:48 PM

Office of Legislative Research and General Counsel