

OFFENDER REGISTRY REVIEW

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill corrects an age difference for an offense from 10 to 15 years.

Highlighted Provisions:

This bill:

- ▶ corrects a mistake made in 2012 when merging a coordination clause; and
- ▶ changes the age difference for removal from the registry in the offense of unlawful conduct with a 16 or 17 year old from 10 to 15 years.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-41-112, as enacted by Laws of Utah 2012, Chapter 247 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 247

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

Section 1. Section **77-41-112** is amended to read:

77-41-112. Removal from registry -- Requirements -- Procedure.

(1) An offender may petition the court where the offender was convicted of the offense requiring registration for an order removing the offender from the Sex Offender and Kidnap Offender Registry if:

- 30 (a) the offender was convicted of violating:
- 31 (i) Section 76-5-301, Kidnapping, and the conviction of violating Section 76-5-301 is
- 32 the only conviction for which the offender is required to register;
- 33 (ii) Section 76-5-304, Unlawful Detention, and the conviction of violating Section
- 34 76-5-304 is the only conviction for which the offender is required to register;
- 35 (iii) Section 76-5-401, Unlawful sexual activity with a minor and, at the time of the
- 36 offense, was not more than 10 years older than the victim; or
- 37 (iv) Section 76-5-401.2, Unlawful sexual conduct with a 16 or 17 year old, and at the
- 38 time of the offense, was not more than [~~10~~] 15 years older than the victim;
- 39 (b) five years have passed since the completion of the offender's sentence;
- 40 (c) the offender has successfully completed all treatment ordered by the court or the
- 41 Board of Pardons and Parole relating to the conviction;
- 42 (d) (i) the offender has not been convicted of any other crime, excluding traffic
- 43 offenses, as evidenced by a certificate of eligibility issued by the bureau;
- 44 (ii) as used in this Section, "traffic offense" does not include a violation of Title 41,
- 45 Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- 46 (e) the offender has paid all restitution ordered by the court;
- 47 (f) the offender has complied with all the registration requirements at all times as
- 48 required in this chapter, as evidenced by a document obtained by the offender from the Utah
- 49 Department of Corrections, which confirms compliance; and
- 50 (g) the office that prosecuted the offender, and the victim, or if the victim is still a
- 51 minor, the victim's parent, are notified and provided with an opportunity to respond in
- 52 accordance with Subsection (3)(a).
- 53 (2) (a) (i) An offender seeking removal from the Sex Offender or Kidnap Offender
- 54 Registry shall apply for a certificate of eligibility from the bureau.
- 55 (ii) An offender who intentionally or knowingly provides any false or misleading
- 56 information to the bureau when applying for a certificate of eligibility is guilty of a class B
- 57 misdemeanor and subject to prosecution under Section 76-8-504.6.

58 (iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate
59 of eligibility to anyone providing false information on an application.

60 (b) (i) The bureau shall perform a check of records of governmental agencies,
61 including national criminal databases, to determine whether an offender is eligible to receive a
62 certificate of eligibility under this section.

63 (ii) If the offender meets all of the criteria under Subsections (1)(b) and (d), the bureau
64 shall issue a certificate of eligibility to the offender, which shall be valid for a period of 90 days
65 from the date the certificate is issued.

66 (c) (i) The bureau shall charge application and issuance fees for a certificate of
67 eligibility in accordance with the process in Section 63J-1-504.

68 (ii) The application fee shall be paid at the time the offender submits an application for
69 a certificate of eligibility to the bureau.

70 (iii) If the bureau determines that the issuance of a certificate of eligibility is
71 appropriate, the offender will be charged an additional fee for the issuance of a certificate of
72 eligibility.

73 (d) Funds generated under this Subsection (2) shall be deposited in the General Fund as
74 a dedicated credit by the department to cover the costs incurred in determining eligibility.

75 (3) (a) The offender shall file the petition, original information, and court docket with
76 the court, and deliver a copy of the petition to the office of the prosecutor.

77 (i) Upon receipt of a petition for removal from the Sex Offender and Kidnap Offender
78 Registry, the office of the prosecutor shall provide notice of the petition by first-class mail to
79 the victim at the most recent address of record on file or, if the victim is still a minor, to the
80 parent or guardian of the victim.

81 (ii) The notice shall include a copy of the petition, state that the victim has a right to
82 object to the removal of the offender from the registry, and provide instructions for registering
83 an objection with the court.

84 (b) The office of the prosecutor shall provide the following, if available, to the court
85 within 30 days after receiving the petition:

- 86 (i) presentencing report;
- 87 (ii) any evaluation done as part of sentencing; and
- 88 (iii) any other information the office of the prosecutor feels the court should consider.

89 (c) The victim, or the victim's parent or guardian if the victim is a minor, may respond
90 to the petition by filing a recommendation or objection with the court within 45 days after the
91 mailing of the petition to the victim.

92 (4) (a) The court shall:

- 93 (i) review the petition and all documents submitted with the petition; and
- 94 (ii) hold a hearing if requested by the prosecutor or the victim.

95 (b) The court shall consider whether the offender has paid all restitution ordered by the
96 court or the Board of Pardons.

97 (c) If the court determines that it is not contrary to the interests of the public to do so, it
98 may grant the petition and order removal of the offender from the registry.

99 (d) If the court grants the petition, it shall forward a copy of the order directing removal
100 of the offender from the registry to the department and the office of the prosecutor.

101 (5) The office of the prosecutor shall notify the victim of the court's decision in the
102 same manner as notification was provided in Subsection (3)(a).