

SEX OFFENDER AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Curtis Oda

LONG TITLE

General Description:

This bill modifies the Utah Criminal Code and the Utah Code of Criminal Procedure regarding sex offender registration violations.

Highlighted Provisions:

This bill:

► provides that a violation of the sex offender registration requirements is considered to be committed:

- at the most recent registered primary residence of the offender, if the location of the offender is not known; or
- at the actual location of the offender at the time the offender is apprehended.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-1-201, as last amended by Laws of Utah 2004, Chapters 151 and 227

76-1-202, as last amended by Laws of Utah 2004, Chapter 227

77-41-105, as enacted by Laws of Utah 2012, Chapter 145 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 382

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

30 Section 1. Section **76-1-201** is amended to read:

31 **76-1-201. Jurisdiction of offenses.**

32 (1) A person is subject to prosecution in this state for an offense which he commits,
33 while either within or outside the state, by his own conduct or that of another for which he is
34 legally accountable, if:

35 (a) the offense is committed either wholly or partly within the state;

36 (b) the conduct outside the state constitutes an attempt to commit an offense within the
37 state;

38 (c) the conduct outside the state constitutes a conspiracy to commit an offense within
39 the state and an act in furtherance of the conspiracy occurs in the state; or

40 (d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to
41 commit in another jurisdiction an offense under the laws of both this state and the other
42 jurisdiction.

43 (2) An offense is committed partly within this state if either the conduct which is any
44 element of the offense, or the result which is an element, occurs within this state.

45 (3) In homicide offenses, the "result" is either the physical contact which causes death
46 or the death itself.

47 (a) If the body of a homicide victim is found within the state, the death shall be
48 presumed to have occurred within the state.

49 (b) If jurisdiction is based on this presumption, this state retains jurisdiction unless the
50 defendant proves by clear and convincing evidence that:

51 (i) the result of the homicide did not occur in this state; and

52 (ii) the defendant did not engage in any conduct in this state which is any element of
53 the offense.

54 (4) (a) An offense which is based on an omission to perform a duty imposed by the law
55 of this state is committed within the state regardless of the location of the offender at the time
56 of the omission.

57 (b) For the purpose of establishing venue for a violation of Subsection [77-41-105\(3\)](#)

58 concerning sex offender registration, the offense is considered to be committed:

59 (i) at the most recent registered primary residence of the offender, if the actual location
60 of the offender at the time of the violation is not known; or

61 (ii) at the location of the offender at the time the offender is apprehended.

62 (5) (a) If no jurisdictional issue is raised, the pleadings are sufficient to establish
63 jurisdiction.

64 (b) The defendant may challenge jurisdiction by filing a motion before trial stating
65 which facts exist that deprive the state of jurisdiction.

66 (c) The burden is upon the state to initially establish jurisdiction over the offense by a
67 preponderance of the evidence by showing under the provisions of Subsections (1) through (4)
68 that the offense was committed either wholly or partly within the borders of the state.

69 (d) If after the prosecution has met its burden of proof under Subsection (5)(c) the
70 defendant claims that the state is deprived of jurisdiction or may not exercise jurisdiction, the
71 burden is upon the defendant to prove by a preponderance of the evidence:

72 (i) any facts claimed; and

73 (ii) why those facts deprive the state of jurisdiction.

74 (6) Facts that deprive the state of jurisdiction or prohibit the state from exercising
75 jurisdiction include the fact that the:

76 (a) defendant is serving in a position that is entitled to diplomatic immunity from
77 prosecution and that the defendant's country has not waived that diplomatic immunity;

78 (b) defendant is a member of the armed forces of another country and that the crime
79 that he is alleged to have committed is one that due to an international agreement, such as a
80 status of forces agreement between his country and the United States, cedes the exercise of
81 jurisdiction over him for that offense to his country;

82 (c) defendant is an enrolled member of an Indian tribe, as defined in Section 9-9-101,
83 and that the Indian tribe has a legal status with the United States or the state that vests
84 jurisdiction in either tribal or federal courts for certain offenses committed within the exterior
85 boundaries of a tribal reservation, and that the facts establish that the crime is one that vests

86 jurisdiction in tribal or federal court; or

87 (d) offense occurred on land that is exclusively within federal jurisdiction.

88 (7) (a) The Legislature finds that identity fraud under Chapter 6, Part 11, Identity Fraud
89 Act, involves the use of personal identifying information which is uniquely personal to the
90 consumer or business victim of that identity fraud and which information is considered to be in
91 lawful possession of the consumer or business victim wherever the consumer or business
92 victim currently resides or is found.

93 (b) For purposes of Subsection (1)(a), an offense which is based on a violation of
94 Chapter 6, Part 11, Identity Fraud Act, is committed partly within this state, regardless of the
95 location of the offender at the time of the offense, if the victim of the identity fraud resides or is
96 found in this state.

97 (8) The judge shall determine jurisdiction.

98 Section 2. Section **76-1-202** is amended to read:

99 **76-1-202. Venue of actions.**

100 (1) Criminal actions shall be tried in the county, district, or precinct where the offense
101 is alleged to have been committed. In determining the proper place of trial, the following
102 provisions shall apply:

103 (a) If the commission of an offense commenced outside the state is consummated
104 within this state, the offender shall be tried in the county where the offense is consummated.

105 (b) When conduct constituting elements of an offense or results that constitute
106 elements, whether the conduct or result constituting elements is in itself unlawful, shall occur
107 in two or more counties, trial of the offense may be held in any of the counties concerned.

108 (c) If a person committing an offense upon the person of another is located in one
109 county and his victim is located in another county at the time of the commission of the offense,
110 trial may be held in either county.

111 (d) If a cause of death is inflicted in one county and death ensues in another county, the
112 offender may be tried in either county.

113 (e) A person who commits an inchoate offense may be tried in any county in which any

114 act that is an element of the offense, including the agreement in conspiracy, is committed.

115 (f) Where a person in one county solicits, aids, abets, agrees, or attempts to aid another
116 in the planning or commission of an offense in another county, he may be tried for the offense
117 in either county.

118 (g) When an offense is committed within this state and it cannot be readily determined
119 in which county or district the offense occurred, the following provisions shall be applicable:

120 (i) When an offense is committed upon any railroad car, vehicle, watercraft, or aircraft
121 passing within this state, the offender may be tried in any county through which such railroad
122 car, vehicle, watercraft, or aircraft has passed.

123 (ii) When an offense is committed on any body of water bordering on or within this
124 state, the offender may be tried in any county adjacent to such body of water. The words "body
125 of water" shall include but not be limited to any stream, river, lake, or reservoir, whether
126 natural or man-made.

127 (iii) A person who commits theft may be tried in any county in which he exerts control
128 over the property affected.

129 (iv) If an offense is committed on or near the boundary of two or more counties, trial of
130 the offense may be held in any of such counties.

131 (v) For any other offense, trial may be held in the county in which the defendant
132 resides, or, if he has no fixed residence, in the county in which he is apprehended or to which
133 he is extradited.

134 (h) A person who commits an offense based on Chapter 6, Part 11, Identity Fraud Act,
135 may be tried in the county:

136 (i) where the victim's personal identifying information was obtained;

137 (ii) where the defendant used or attempted to use the personally identifying
138 information;

139 (iii) where the victim of the identity fraud resides or is found; or

140 (iv) if multiple offenses of identity fraud occur in multiple jurisdictions, in any county
141 where the victim's identity was used or obtained, or where the victim resides or is found.

142 (i) For the purpose of establishing venue for a violation of Subsection 77-41-105(3)
143 concerning sex offender registration, the offense is considered to be committed:

144 (i) at the most recent registered primary residence of the offender, if the actual location
145 of the offender at the time of the violation is not known; or

146 (ii) at the location of the offender at the time the offender is apprehended.

147 (2) All objections of improper place of trial are waived by a defendant unless made
148 before trial.

149 Section 3. Section 77-41-105 is amended to read:

150 **77-41-105. Registration of offenders -- Offender responsibilities.**

151 (1) An offender convicted by any other jurisdiction is required to register under
152 Subsection (3) and Subsection 77-41-102(9) or (16). The offender shall register with the
153 department within 10 days of entering the state, regardless of the offender's length of stay.

154 (2) (a) An offender required to register under Subsection 77-41-102(9) or (16) who is
155 under supervision by the department shall register with Division of Adult Probation and Parole.

156 (b) An offender required to register under Subsection 77-41-102(9) or (16) who is no
157 longer under supervision by the department shall register with the police department or sheriff's
158 office that has jurisdiction over the area where the offender resides.

159 (3) (a) Except as provided in Subsections (3)(b), (c), and (4), and Section 77-41-106,
160 an offender shall, for the duration of the sentence and for 10 years after termination of sentence
161 or custody of the division, register every year during the month of the offender's date of birth,
162 during the month that is the sixth month after the offender's birth month, and also within three
163 business days of every change of the offender's primary residence, any secondary residences,
164 place of employment, vehicle information, or educational information required to be submitted
165 under Subsection (8).

166 (b) Except as provided in Subsections (4)[;] and (5), and Section 77-41-106, an
167 offender who is convicted in another jurisdiction of an offense listed in Subsection
168 77-41-102(9)(a) or (16)(a), a substantially similar offense, or any other offense that requires
169 registration in the jurisdiction of conviction, shall:

170 (i) register for the time period, and in the frequency, required by the jurisdiction where
171 the offender was convicted if that jurisdiction's registration period or registration frequency
172 requirement for the offense that the offender was convicted of is greater than the 10 years from
173 completion of the sentence registration period that is required under Subsection (3)(a), or is
174 more frequent than every six months; or

175 (ii) register in accordance with the requirements of Subsection (3)(a), if the
176 jurisdiction's registration period or frequency requirement for the offense that the offender was
177 convicted of is less than the registration period required under Subsection (3)(a), or is less
178 frequent than every six months.

179 (c) (i) An offender convicted as an adult of any of the offenses listed in Section
180 77-41-106 shall, for the offender's lifetime, register every year during the month of the
181 offender's birth, during the month that is the sixth month after the offender's birth month, and
182 also within three business days of every change of the offender's primary residence, any
183 secondary residences, place of employment, vehicle information, or educational information
184 required to be submitted under Subsection (8).

185 (ii) This registration requirement is not subject to exemptions and may not be
186 terminated or altered during the offender's lifetime.

187 (d) For the purpose of establishing venue for a violation of this Subsection (3), the
188 violation is considered to be committed:

189 (i) at the most recent registered primary residence of the offender or at the location of
190 the offender, if the actual location of the offender at the time of the violation is not known; or

191 (ii) at the location of the offender at the time the offender is apprehended.

192 (4) Notwithstanding Subsection (3) and Section 77-41-106, an offender who is
193 confined in a secure facility or in a state mental hospital is not required to register during the
194 period of confinement.

195 (5) In the case of an offender adjudicated in another jurisdiction as a juvenile and
196 required to register under this chapter, the offender shall register in the time period and in the
197 frequency consistent with the requirements of this Subsection (5). However, if the jurisdiction

198 of the offender's adjudication does not publish the offender's information on a public website,
199 the department shall maintain, but not publish the offender's information on the Sex Offender
200 and Kidnap Offender Registration website.

201 (6) An offender who is required to register under Subsection (3) shall surrender the
202 offender's license, certificate, or identification card as required under Subsection 53-3-216(3)
203 or 53-3-807(4) and may apply for a license certificate or identification card as provided under
204 Section 53-3-205 or 53-3-804.

205 (7) A sex offender who violates Section 77-27-21.8 regarding being in the presence of
206 a child while required to register under this chapter shall register for an additional five years
207 subsequent to the registration period otherwise required under this chapter.

208 (8) An offender shall provide the department or the registering entity with the
209 following information:

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

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

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

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

216 (e) a current photograph of the offender;

217 (f) a set of fingerprints, if one has not already been provided;

218 (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not
219 already been provided;

220 (h) telephone numbers and any other designations used by the offender for routing or
221 self-identification in telephonic communications from fixed locations or cellular telephones;

222 (i) Internet identifiers and the addresses the offender uses for routing or
223 self-identification in Internet communications or postings;

224 (j) the name and Internet address of all websites on which the offender is registered
225 using an online identifier, including all online identifiers used to access those websites;

- 226 (k) a copy of the offender's passport, if a passport has been issued to the offender;
- 227 (l) if the offender is an alien, all documents establishing the offender's immigration
- 228 status;
- 229 (m) all professional licenses that authorize the offender to engage in an occupation or
- 230 carry out a trade or business, including any identifiers, such as numbers;
- 231 (n) each educational institution in Utah at which the offender is employed, carries on a
- 232 vocation, or is a student, and any change of enrollment or employment status of the offender at
- 233 any educational institution;
- 234 (o) the name and the address of any place where the offender is employed or will be
- 235 employed;
- 236 (p) the name and the address of any place where the offender works as a volunteer or
- 237 will work as a volunteer; and
- 238 (q) the offender's Social Security number.
- 239 (9) Notwithstanding Section 42-1-1, an offender:
- 240 (a) may not change the offender's name:
- 241 (i) while under the jurisdiction of the department; and
- 242 (ii) until the registration requirements of this statute have expired; and
- 243 (b) may not change the offender's name at any time, if registration is for life under
- 244 Subsection 77-41-105(3)(c).
- 245 (10) Notwithstanding Subsections (8)(i) and (j) and 77-41-103(1)(c), an offender is not
- 246 required to provide the department with:
- 247 (a) the offender's online identifier and password used exclusively for the offender's
- 248 employment on equipment provided by an employer and used to access the employer's private
- 249 network; or
- 250 (b) online identifiers for the offender's financial accounts, including any bank,
- 251 retirement, or investment accounts.