

CRIMINAL OFFENSES MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: Jacob L. Anderegg

LONG TITLE

General Description:

This bill modifies provisions related to criminal offenses including registration on the Sex and Kidnap Offender Registry.

Highlighted Provisions:

This bill:

- ▶ authorizes a court to impose a lesser term for certain offenses under certain circumstances;
- ▶ prohibits lifetime registration for persons who are under 21 years of age under certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-402.1, as last amended by Laws of Utah 2013, Chapter 81

76-5-402.3, as last amended by Laws of Utah 2013, Chapter 81

76-5-403.1, as last amended by Laws of Utah 2013, Chapter 81

77-41-105, as last amended by Laws of Utah 2016, Chapter 185

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

30 Section 1. Section **76-5-402.1** is amended to read:

31 **76-5-402.1. Rape of a child.**

32 (1) A person commits rape of a child when the person has sexual intercourse with a
33 child who is under the age of 14.

34 (2) Rape of a child is a first degree felony punishable by a term of imprisonment of:

35 (a) except as provided in ~~[Subsection]~~ Subsections (2)(b) and (4), not less than 25 years
36 and which may be for life; or

37 (b) life without parole, if the trier of fact finds that:

38 (i) during the course of the commission of the rape of a child, the defendant caused
39 serious bodily injury to another; or

40 (ii) at the time of the commission of the rape of a child the defendant was previously
41 convicted of a grievous sexual offense.

42 (3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age
43 at the time of the offense.

44 (4) (a) When imposing a sentence under Subsection (2)(a) and (4)(b), a court may
45 impose a term of imprisonment under Subsection (4)(b) if:

46 (i) it is a first time offense for the defendant under this section;

47 (ii) the defendant was younger than 21 years of age at the time of the offense; and

48 (iii) the court finds that a lesser term than the term described in Subsection (2)(a) is in
49 the interests of justice under the facts and circumstances of the case, including the age of the
50 victim, and states the reasons for this finding on the record.

51 (b) If the conditions of Subsection (4)(a) are met, the court may impose a term of
52 imprisonment of not less than:

53 (i) 15 years and which may be for life;

54 (ii) 10 years and which may be for life; or

55 (iii) six years and which may be for life.

56 ~~[(4)]~~ (5) Imprisonment under this section is mandatory in accordance with Section
57 76-3-406.

58 Section 2. Section **76-5-402.3** is amended to read:

59 **76-5-402.3. Object rape of a child -- Penalty.**

60 (1) A person commits object rape of a child when the person causes the penetration or
61 touching, however slight, of the genital or anal opening of a child who is under the age of 14 by
62 any foreign object, substance, instrument, or device, not including a part of the human body,
63 with intent to cause substantial emotional or bodily pain to the child or with the intent to arouse
64 or gratify the sexual desire of any person.

65 (2) Object rape of a child is a first degree felony punishable by a term of imprisonment
66 of:

67 (a) except as provided in ~~[Subsection]~~ Subsections (2)(b) and (4), not less than 25 years
68 and which may be for life; or

69 (b) life without parole, if the trier of fact finds that:

70 (i) during the course of the commission of the object rape of a child the defendant
71 caused serious bodily injury to another; or

72 (ii) at the time of the commission of the object rape of a child the defendant was
73 previously convicted of a grievous sexual offense.

74 (3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age
75 at the time of the offense.

76 (4) (a) When imposing a sentence under Subsection (2)(a) and (4)(b), a court may
77 impose a term of imprisonment under Subsection (4)(b) if:

78 (i) it is a first time offense for the defendant under this section;

79 (ii) the defendant was younger than 21 years of age at the time of the offense; and

80 (iii) the court finds that a lesser term than the term described in Subsection (2)(a) is in
81 the interests of justice under the facts and circumstances of the case, including the age of the
82 victim, and states the reasons for this finding on the record.

83 (b) If the conditions of Subsection (4)(a) are met, the court may impose a term of
84 imprisonment of not less than:

85 (i) 15 years and which may be for life;

86 (ii) 10 years and which may be for life; or

87 (iii) six years and which may be for life.

88 [~~4~~] (5) Imprisonment under this section is mandatory in accordance with Section

89 76-3-406.

90 Section 3. Section **76-5-403.1** is amended to read:

91 **76-5-403.1. Sodomy on a child.**

92 (1) A person commits sodomy upon a child if the actor engages in any sexual act upon
93 or with a child who is under the age of 14, involving the genitals or anus of the actor or the
94 child and the mouth or anus of either person, regardless of the sex of either participant.

95 (2) Sodomy upon a child is a first degree felony punishable by a term of imprisonment
96 of:

97 (a) except as provided in [~~Subsection~~] Subsections (2)(b) and (4), not less than 25 years
98 and which may be for life; or

99 (b) life without parole, if the trier of fact finds that:

100 (i) during the course of the commission of the sodomy upon a child the defendant
101 caused serious bodily injury to another; or

102 (ii) at the time of the commission of the sodomy upon a child, the defendant was
103 previously convicted of a grievous sexual offense.

104 (3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age
105 at the time of the offense.

106 (4) (a) When imposing a sentence under Subsection (2)(a) and (4)(b), a court may
107 impose a term of imprisonment under Subsection (4)(b) if:

108 (i) it is a first time offense for the defendant under this section;

109 (ii) the defendant was younger than 21 years of age at the time of the offense; and

110 (iii) the court finds that a lesser term than the term described in Subsection (2)(a) is in
111 the interests of justice under the facts and circumstances of the case, including the age of the
112 victim, and states the reasons for this finding on the record.

113 (b) If the conditions of Subsection (4)(a) are met, the court may impose a term of

114 imprisonment of not less than:

- 115 (i) 15 years and which may be for life;
- 116 (ii) 10 years and which may be for life; or
- 117 (iii) six years and which may be for life.

118 [~~4~~] (5) Imprisonment under this section is mandatory in accordance with Section
119 76-3-406.

120 Section 4. Section 77-41-105 is amended to read:

121 **77-41-105. Registration of offenders -- Offender responsibilities.**

122 (1) An offender convicted by any other jurisdiction is required to register under
123 Subsection (3) and Subsection 77-41-102(9) or (17). The offender shall register with the
124 department within 10 days of entering the state, regardless of the offender's length of stay.

125 (2) (a) An offender required to register under Subsection 77-41-102(9) or (17) who is
126 under supervision by the department shall register in person with Division of Adult Probation
127 and Parole.

128 (b) An offender required to register under Subsection 77-41-102(9) or (17) who is no
129 longer under supervision by the department shall register in person with the police department
130 or sheriff's office that has jurisdiction over the area where the offender resides.

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

138 (b) Except as provided in Subsections (4) and (5), and Section 77-41-106, an offender
139 who is convicted in another jurisdiction of an offense listed in Subsection 77-41-102(9)(a) or
140 (17)(a), a substantially similar offense, or any other offense that requires registration in the
141 jurisdiction of conviction, shall:

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

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

151 (c) (i) An offender convicted as an adult of any of the offenses listed in Section
152 77-41-106 shall, for the offender's lifetime, register every year during the month of the
153 offender's birth, during the month that is the sixth month after the offender's birth month, and
154 also within three business days of every change of the offender's primary residence, any
155 secondary residences, place of employment, vehicle information, or educational information
156 required to be submitted under Subsection (8).

157 (ii) This registration requirement is not subject to exemptions and may not be
158 terminated or altered during the offender's lifetime, unless a petition is granted under Section
159 77-41-112.

160 (iii) If the offense does not involve force or coercion, lifetime registration under this
161 Subsection (3)(c) does not apply to an offender who commits the offense when the offender is
162 under 21 years of age. For an offense listed in Section 77-41-106, an offender who commits the
163 offense when the offender is under 21 years of age is required to register in accordance with
164 this chapter for 10 years after termination of sentence or custody of the division, unless a
165 petition is granted under Section 77-41-112.

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

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

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

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

174 (5) In the case of an offender adjudicated in another jurisdiction as a juvenile and
175 required to register under this chapter, the offender shall register in the time period and in the
176 frequency consistent with the requirements of this Subsection (5). However, if the jurisdiction
177 of the offender's adjudication does not publish the offender's information on a public website,
178 the department shall maintain, but not publish the offender's information on the Sex Offender
179 and Kidnap Offender Registration website.

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

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

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

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

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

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

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

195 (e) a current photograph of the offender;

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

197 (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not

198 already been provided;

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

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

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

205 (k) a copy of the offender's passport, if a passport has been issued to the offender;

206 (l) if the offender is an alien, all documents establishing the offender's immigration
207 status;

208 (m) all professional licenses that authorize the offender to engage in an occupation or
209 carry out a trade or business, including any identifiers, such as numbers;

210 (n) each educational institution in Utah at which the offender is employed, carries on a
211 vocation, or is a student, and any change of enrollment or employment status of the offender at
212 any educational institution;

213 (o) the name, the telephone number, and the address of any place where the offender is
214 employed or will be employed;

215 (p) the name, the telephone number, and the address of any place where the offender
216 works as a volunteer or will work as a volunteer; and

217 (q) the offender's social security number.

218 (9) Notwithstanding Section 42-1-1, an offender:

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

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

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

222 (b) may not change the offender's name at any time, if registration is for life under

223 Subsection [77-41-105] (3)(c).

224 (10) Notwithstanding Subsections (8)(i) and (j) and 77-41-103(1)(c), an offender is not
225 required to provide the department with:

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

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