

## HB0149S02 compared with HB0149S01

~~deleted text~~ shows text that was in HB0149S01 but was deleted in HB0149S02.

Inserted text shows text that was not in HB0149S01 but was inserted into HB0149S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Derrin R. Owens proposes the following substitute bill:

### CHILD ABUSE OFFENDER REGISTRY

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derrin R. Owens**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill creates the Child Abuse Offender Registry to be administered by the Department of ~~Human Services~~ Corrections.

##### Highlighted Provisions:

This bill:

- ▶ creates the Child Abuse Offender Registry;
- ▶ requires persons convicted of felony child abuse, child endangerment, and human trafficking to register;
- ▶ specifies requirements for registration;
- ▶ sets penalties for failure to register; and
- ▶ places the registry within the Department of ~~Human Services~~ Corrections.

##### Money Appropriated in this Bill:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**53-3-806.5**, as last amended by Laws of Utah 2012, Chapter 145

**62A-7-104**, as last amended by Laws of Utah 2015, Chapter 210

**63G-2-302**, as last amended by Laws of Utah 2016, Chapter 410

**76-1-201**, as last amended by Laws of Utah 2014, Chapter 105

**76-1-202**, as last amended by Laws of Utah 2014, Chapter 105

**76-3-402**, as last amended by Laws of Utah 2012, Chapter 145

**77-40-105**, as last amended by Laws of Utah 2016, Chapter 185

#### ENACTS:

~~{ **62A-1-121**, Utah Code Annotated 1953~~

{ **77-43-101**, Utah Code Annotated 1953

**77-43-102**, Utah Code Annotated 1953

**77-43-103**, Utah Code Annotated 1953

**77-43-104**, Utah Code Annotated 1953

**77-43-105**, Utah Code Annotated 1953

**77-43-106**, Utah Code Annotated 1953

**77-43-107**, Utah Code Annotated 1953

**77-43-108**, Utah Code Annotated 1953

**77-43-109**, Utah Code Annotated 1953

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

Section 1. Section **53-3-806.5** is amended to read:

**53-3-806.5. Identification card required if offender does not have driver license.**

(1) (a) If a person is required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry or as a child abuse offender in accordance with Title 77, Chapter 43, Child Abuse Registry, and the person does not hold a current driver license in compliance with Section 53-3-205, the person shall obtain an identification card.

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(b) The person shall maintain a current identification card during any time the person is required to register as a sex or child abuse offender and the person does not hold a valid driver license.

(2) Failure to maintain a current identification card as required under Subsection (1) on and after April 30, 2007 is a class A misdemeanor for each month of violation of Subsection (1).

Section 2. Section ~~{62A-1-121}~~ 62A-7-104 is ~~{enacted}~~ amended to read:

~~{~~ ~~62A-1-121. Child Abuse Offender Registry.~~

~~—~~ ~~The department shall administer the Child Abuse Offender Registry created in Title 77, Chapter 43, Child Abuse Offender Registry.~~

~~—~~ ~~Section 3. Section 62A-7-104 is amended to read:~~

~~†~~ **62A-7-104. Division responsibilities.**

(1) The division is responsible for all youth offenders committed to it by juvenile courts for secure confinement or supervision and treatment in the community.

(2) The division shall:

(a) establish and administer a continuum of community, secure, and nonsecure programs for all youth offenders committed to the division;

(b) establish and maintain all detention and secure facilities and set minimum standards for those facilities;

(c) establish and operate prevention and early intervention youth services programs for nonadjudicated youth placed with the division; and

(d) establish observation and assessment programs necessary to serve youth offenders committed by the juvenile court for short-term observation under Subsection 78A-6-117(2)(e), and whenever possible, conduct the programs in settings separate and distinct from secure facilities for youth offenders.

(3) The division shall place youth offenders committed to it in the most appropriate program for supervision and treatment.

(4) In any order committing a youth offender to the division, the juvenile court shall specify whether the youth offender is being committed for secure confinement or placement in a community-based program. The division shall place the youth offender in the most appropriate program within the category specified by the court.

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(5) The division shall employ staff necessary to:

(a) supervise and control youth offenders in secure facilities or in the community;

(b) supervise and coordinate treatment of youth offenders committed to the division for placement in community-based programs; and

(c) control and supervise nonadjudicated youth placed with the division for temporary services in receiving centers, youth services, and other programs established by the division.

(6) Youth in the custody or temporary custody of the division are controlled or detained in a manner consistent with public safety and rules promulgated by the division. In the event of an unauthorized leave from a secure facility, detention center, community-based program, receiving center, home, or any other designated placement, division employees have the authority and duty to locate and apprehend the youth, or to initiate action with local law enforcement agencies for assistance.

(7) The division shall establish and operate compensatory-service work programs for youth offenders committed to the division by the juvenile court. The compensatory-service work program shall:

(a) provide labor to help in the operation, repair, and maintenance of public facilities, parks, highways, and other programs designated by the division;

(b) provide educational and prevocational programs in cooperation with the State Board of Education for youth offenders placed in the program; and

(c) provide counseling to youth offenders.

(8) The division shall establish minimum standards for the operation of all private residential and nonresidential rehabilitation facilities which provide services to juveniles who have committed a delinquent act, in this state or in any other state.

(9) In accordance with policies established by the board, the division shall provide regular training for staff of secure facilities, detention staff, case management staff, and staff of the community-based programs.

(10) (a) The division is authorized to employ special function officers, as defined in Section 53-13-105, to locate and apprehend minors who have absconded from division custody, transport minors taken into custody pursuant to division policy, investigate cases, and carry out other duties as assigned by the division.

(b) Special function officers may be employed through contract with the Department of

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Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired by the division.

(11) The division shall designate employees to obtain the saliva DNA specimens required under Section 53-10-403. The division shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(12) The division shall register with the Department of Corrections any person who:

(a) has been adjudicated delinquent based on an offense listed in Subsection 77-41-102(17)(a) or 77-43-102(2);

(b) has been committed to the division for secure confinement; and

(c) remains in the division's custody 30 days prior to the person's 21st birthday.

~~{ (13) The division shall register with the department any person who:~~

~~— (a) has been adjudicated delinquent based on an offense listed in Subsection 77-43-102(2);~~

~~— (b) has been committed to the division for secure confinement; and~~

~~— (c) remains in the division's custody 30 days prior to the person's 21st birthday.~~

‡ Section ~~{4}~~3. Section **63G-2-302** is amended to read:

### **63G-2-302. Private records.**

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received by or generated by or for:

(i) the Independent Legislative Ethics Commission, except for:

(A) the commission's summary data report that is required under legislative rule; and

(B) any other document that is classified as public under legislative rule; or

(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;

(e) records received by, or generated by or for, the Independent Executive Branch

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Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;

(f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if, prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

(h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

(i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

(j) that part of a voter registration record identifying a voter's:

(i) driver license or identification card number;

(ii) Social Security number, or last four digits of the Social Security number;

(iii) email address; or

(iv) date of birth;

(k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);

(l) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information

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Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(m) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(2)(a);

(ii) Subsection 31A-23a-302(3); or

(iii) Subsection 31A-26-210(3);

(n) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(o) information provided by an offender that is:

(i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap Offender Registry or Title 77, Chapter 43, Child Abuse Registry; and

(ii) not required to be made available to the public under Subsection 77-41-110(4) or 77-43-108(4);

(p) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;

(q) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;

(r) an email address provided by a military or overseas voter under Section 20A-16-501;

(s) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;

(t) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 11-49-201, except for:

(i) the commission's summary data report that is required in Section 11-49-202; and

(ii) any other document that is classified as public in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission;

(u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was

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notified of an incident or threat; and

(v) a criminal background check or credit history report conducted in accordance with Section 63A-3-201.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63G-2-301(2);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it;

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and

(g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:

(i) depict the commission of an alleged crime;

(ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

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(iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d);

or

(v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section ~~75~~4. Section **76-1-201** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For the purpose of establishing venue for a violation of Subsection 77-41-105(3) concerning sex offender registration or Subsection 77-43-105(3) for child abuse offender registration, the offense is considered to be committed:

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

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

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

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

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

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

(i) any facts claimed; and

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

(6) Facts that deprive the state of jurisdiction or prohibit the state from exercising

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jurisdiction include the fact that the:

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

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

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

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

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

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

(8) The judge shall determine jurisdiction.

Section ~~6-1-5~~. Section **76-1-202** is amended to read:

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

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

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

(b) When conduct constituting elements of an offense or results that constitute

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elements, whether the conduct or result constituting elements is in itself unlawful, shall occur in two or more counties, trial of the offense may be held in any of the counties concerned.

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

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

(e) A person who commits an inchoate offense may be tried in any county in which any act that is an element of the offense, including the agreement in conspiracy, is committed.

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

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

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

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

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

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

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

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

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

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

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

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

(i) For the purpose of establishing venue for a violation of Subsection 77-41-105(3) concerning sex offender registration or Subsection 77-43-105(3) for child abuse offender registration, the offense is considered to be committed:

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

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

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

Section ~~77~~6. Section **76-3-402** is amended to read:

### **76-3-402. Conviction of lower degree of offense -- Procedure and limitations.**

(1) If at the time of sentencing the court, having regard to the nature and circumstances of the offense of which the defendant was found guilty and to the history and character of the defendant, and after having given any victims present at the sentencing and the prosecuting attorney an opportunity to be heard, concludes it would be unduly harsh to record the conviction as being for that degree of offense established by statute, the court may enter a judgment of conviction for the next lower degree of offense and impose sentence accordingly.

(2) If the court suspends the execution of the sentence and places the defendant on probation, whether or not the defendant is committed to jail as a condition of probation, the court may enter a judgment of conviction for the next lower degree of offense:

(a) after the defendant has been successfully discharged from probation;

(b) upon motion and notice to the prosecuting attorney;

(c) after reasonable effort has been made by the prosecuting attorney to provide notice to any victims;

(d) after a hearing if requested by either party under Subsection (2)(c); and

(e) if the court finds entering a judgment of conviction for the next lower degree of offense is in the interest of justice.

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(3) (a) An offense may be reduced only one degree under this section, whether the reduction is entered under Subsection (1) or (2), unless the prosecutor specifically agrees in writing or on the court record that the offense may be reduced two degrees.

(b) In no case may an offense be reduced under this section by more than two degrees.

(4) This section does not preclude any person from obtaining or being granted an expungement of his record as provided by law.

(5) The court may not enter judgment for a conviction for a lower degree of offense if:

(a) the reduction is specifically precluded by law; or

(b) if any unpaid balance remains on court ordered restitution for the offense for which the reduction is sought.

(6) When the court enters judgment for a lower degree of offense under this section, the actual title of the offense for which the reduction is made may not be altered.

(7) (a) A person may not obtain a reduction under this section of a conviction that requires the person to register as a sex offender until the registration requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

(b) A person required to register as a sex offender for the person's lifetime under Subsection 77-41-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the person to register as a sex offender.

(8) (a) A person may not obtain a reduction under this section of a conviction that requires the person to register as a child abuse offender until the registration requirements under Title 77, Chapter 43, Child Abuse Offender Registry, have expired.

(b) A person required to register as a child abuse offender for the person's lifetime under Subsection 77-43-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the person to register as a child abuse offender.

~~[(8)]~~ (9) As used in this section, "next lower degree of offense" includes an offense regarding which:

(a) a statutory enhancement is charged in the information or indictment that would increase either the maximum or the minimum sentence; and

(b) the court removes the statutory enhancement pursuant to this section.

Section ~~78~~7. Section **77-40-105** is amended to read:

**77-40-105. Eligibility for expungement of conviction -- Requirements.**

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(1) A person convicted of an offense may apply to the bureau for a certificate of eligibility to expunge the record of conviction as provided in this section.

(2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

(a) the conviction for which expungement is sought is:

(i) a capital felony;

(ii) a first degree felony;

(iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

(iv) felony automobile homicide;

(v) a felony violation of Subsection 41-6a-501(2); [~~or~~]

(vi) a registerable sex offense as defined in Subsection 77-41-102(17); or

(vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);

(b) a criminal proceeding is pending against the petitioner; or

(c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.

(3) A petitioner seeking to obtain expungement for a record of conviction is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:

(a) all fines and interest ordered by the court have been paid in full;

(b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and

(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:

(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony conviction of Subsection 58-37-8(2)(g);

(ii) seven years in the case of a felony;

(iii) five years in the case of any class A misdemeanor or a felony drug possession offense;

(iv) four years in the case of a class B misdemeanor; or

(v) three years in the case of any other misdemeanor or infraction.

(4) The bureau may not issue a certificate of eligibility if, at the time the petitioner

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seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;

(b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, excluding infractions and any traffic offenses, each of which is contained in a separate criminal episode.

(5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or

(b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

(6) If the petitioner's criminal history contains convictions for both a drug possession offense and a non drug possession offense arising from the same criminal episode, that criminal episode shall be counted as provided in Subsection (4) if any non drug possession offense in that episode:

(a) is a felony or class A misdemeanor; or

(b) has the same or a longer waiting period under Subsection (3) than any drug possession offense in that episode.

(7) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes pursuant to Section 77-27-5.1.

Section ~~9~~8. Section **77-43-101** is enacted to read:

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## CHAPTER 43. CHILD ABUSE OFFENDER REGISTRY

### 77-43-101. Title.

(1) This chapter is known as the "Child Abuse Offender Registry."

(2) This chapter applies to all child abuse offenders in the custody of the Department of Corrections or on parole or probation on May 9, 2017, or who enter this state on or after May 9, 2017.

Section ~~10~~9. Section **77-43-102** is enacted to read:

### 77-43-102. Definitions.

As used in this chapter:

(1) "Business day" means a day on which state offices are open for regular business.

(2) "Child abuse offender" means any person who:

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

(i) Subsection 76-5-109(2)(a) or (b), child abuse;

(ii) Section 76-5-112.5, child endangerment;

(iii) Section 76-5-308.5, human trafficking of a child; or

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

Subsections (2)(a)(i) through (iii);

(b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court, that is substantially equivalent to the offenses listed in Subsection (2)(a) and who is:

(i) a Utah resident; or

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

(c) (i) is required to register as a child abuse offender in any other jurisdiction of original conviction, who is required to register as a child abuse offender by any state, federal, or military court, or who would be required to register as a child abuse offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or any previous registration requirements; and

(ii) in any 12-month period, is in this state for a total of 10 or more days, regardless of whether the offender intends to permanently reside in this state;

(d) is a nonresident regularly employed or working in this state, or who is a student in

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this state, and was convicted of one or more offenses listed in Subsection (2)(a), or any substantially equivalent offense in another jurisdiction, or who, as a result of the conviction, is required to register in the person's state of residence:

(e) is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (2)(a); or

(f) is adjudicated delinquent based on one or more offenses listed in Subsection (2)(a) and who has been committed to the division for secure confinement for that offense and remains in the division's custody 30 days before the person's 21st birthday.

(3) "Correctional facility" means the same as that term is defined in Section 64-13-1.

(4) "Department" means the Department of ~~Human Services~~ Corrections.

(5) "Division" means the Division of Juvenile Justice Services.

(6) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(7) "Indian Country" means:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and

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

(8) "Jurisdiction" means any state, Indian Country, United States Territory, or any property under the jurisdiction of the United States ~~military~~ Armed Forces, Canada, the United Kingdom, Australia, or New Zealand.

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

(10) "Offender" means a child abuse offender as defined in Subsection (2).

(11) "Online identifier" or "Internet identifier":

(a) means any electronic mail, chat, instant messenger, social networking, or similar

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name used for Internet communication; and

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

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

(13) "Register" means to comply with the requirements of this chapter and administrative rules of the department made under this chapter.

(14) "Registration website" means the Child Abuse Offender Notification and Registration website described in Section 77-43-108 and the information on the website.

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

(16) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

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

Section ~~{11}~~10. Section 77-43-103 is enacted to read:

### **77-43-103. Department duties.**

(1) The department shall:

(a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders;

(b) make information listed in Subsection 77-43-108(4) available to the public; and

(c) share information provided by an offender under this chapter that may not be made available to the public under Subsection 77-43-108(4), but only:

(i) for the purposes under this chapter; or

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

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

(a) the receipt of a report or complaint of an offense listed in Subsection 77-43-102(2)(a), within three business days; and

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(b) the arrest of a person suspected of any of the offenses listed in Subsection 77-43-102(2)(a), within five business days.

(3) Upon convicting and sentencing a person of any of the offenses listed in Subsection 77-43-102(2)(a), the convicting court shall within three business days forward a signed copy of the judgment and sentence to the Child Abuse Offender Registry office within the department.

(4) The department shall:

(a) provide the following additional information when available:

(i) the crimes the offender has been convicted of or adjudicated delinquent for; and

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

(b) maintain the Child Abuse Offender Notification and Registration website; and

(c) ensure that the registration information collected regarding an offender's employment at an educational institution is entered into the appropriate state records or data system.

Section ~~{12}~~ 11. Section 77-43-104 is enacted to read:

**77-43-104. Registration of offenders -- Department and agency requirements.**

(1) An offender in the custody of the ~~{Department of Corrections}~~ department shall be registered by agents of the ~~{Department of Corrections}~~ department upon:

(a) placement on probation;

(b) commitment to a secure correctional facility operated by or under contract to the ~~{Department of Corrections}~~ department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by or under contract to the ~~{Department of Corrections}~~ department; or

(e) termination of probation or parole.

(2) An offender who is not in the custody of the ~~{Department of Corrections}~~ department and who is confined in a correctional facility not operated by or under contract to the department shall be registered with the department by the sheriff of the county in which the offender is confined, upon:

(a) commitment to the correctional facility; and

(b) release from confinement.

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(3) An offender in the custody of the division shall be registered with the department by the division prior to release from custody.

(4) An offender committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.

(5) (a) (i) A municipal or county law enforcement agency shall register an offender who resides within the agency's jurisdiction and is not under the supervision of the Division of Adult Probation and Parole.

(ii) In order to conduct offender registration under this chapter, the agency shall ensure the agency staff responsible for registration:

(A) has received initial training by the department and has been certified as qualified and authorized to conduct registrations and enter offender registration information into the registry database; and

(B) certify annually with the department.

(b) (i) When the department receives offender registration information regarding a change of an offender's primary residence location, the department shall within five days electronically notify the law enforcement agencies that have jurisdiction over the area where:

(A) the residence that the offender is leaving is located; and

(B) the residence to which the offender is moving is located.

(ii) The department shall provide notification under this Subsection (5)(b) if the offender's change of address is between law enforcement agency jurisdictions, or is within one jurisdiction.

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

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

(a) the continuing registration requirements of this chapter during the period of registration required in Subsection 77-43-105(3), including:

(i) notification to the state agencies in the states where the registrant presently resides

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and plans to reside when moving across state lines;

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

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

(b) the identification card requirement under Section 53-3-806.5.

(7) The department may make administrative rules necessary to implement this chapter, including:

(a) training requirements for agency staff responsible for conducting offender registration;

(b) the method for dissemination of the information; and

(c) instructions to the public regarding the use of the information.

(8) Any information regarding the identity or location of a victim shall be redacted by the department from information provided under Subsections 77-43-103(4) and 77-43-105(8).

(9) This chapter does not create or impose any duty on any person to request or obtain information regarding any offender from the department.

Section ~~†13†~~12. Section 77-43-105 is enacted to read:

### **77-43-105. Registration of offenders -- Offender responsibilities.**

(1) An offender convicted by any other jurisdiction is required to register under Subsection (3) and Subsection 77-43-102(2). The offender shall register with the department within 10 days of entering the state, regardless of the offender's length of stay.

(2) (a) An offender required to register under this chapter who is under supervision by the department shall register in person with Division of Adult Probation and Parole.

(b) An offender required to register under this chapter who is no longer under supervision by the department shall register in person with the police department or sheriff's office that has jurisdiction over the area where the offender resides.

(3) (a) Except as provided in Subsections (3)(b), (c), and (4), an offender shall, for the duration of the sentence and for 10 years after termination of sentence or custody of the division, register every year during the month of the offender's date of birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of

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employment, vehicle information, or educational information required to be submitted under Subsection (8).

(b) Except as provided in Subsections (4) and (5), an offender who is convicted in another jurisdiction of an offense listed in Subsection 77-43-102(2)(a), a substantially similar offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

(i) register for the time period, and in the frequency, required by the jurisdiction where the offender was convicted if that jurisdiction's registration period or registration frequency requirement for the offense that the offender was convicted of is greater than the 10 years from completion of the sentence registration period that is required under Subsection (2)(a), or is more frequent than every six months; or

(ii) register in accordance with the requirements of Subsection (2)(a), if the jurisdiction's registration period or frequency requirement for the offense that the offender was convicted of is less than the registration period required under Subsection (2)(a), or is less frequent than every six months.

(c) (i) An offender convicted as an adult of any first degree felony offense listed in Subsection 77-43-102(2)(a) shall, for the offender's lifetime, register every year during the month of the offender's birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (6).

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

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

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

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

(4) Notwithstanding Subsection (3), an offender who is confined in a secure facility or in a state mental hospital is not required to register during the period of confinement.

(5) In the case of an offender adjudicated in another jurisdiction as a juvenile and required to register under this chapter, the offender shall register in the time period and in the

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frequency consistent with the requirements of this Subsection (5). However, if the jurisdiction of the offender's adjudication does not publish the offender's information on a public website, the department shall maintain, but not publish the offender's information on the Child Abuse Offender Registration website.

(6) An offender shall provide the department or the registering entity with the following information:

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

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

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

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

(e) a current photograph of the offender;

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

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

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

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

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

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

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

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

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

(o) the name, the telephone number, and the address of any place where the offender is

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employed or will be employed:

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

(q) the offender's social security number.

(7) Notwithstanding Section 42-1-1, an offender:

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

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

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

(b) may not change the offender's name at any time, if registration is for life under Subsection (3)(c).

(8) Notwithstanding Subsections (6)(i) and (j) and 77-43-103(1)(c), an offender is not required to provide the department with:

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

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

Section ~~{14}~~13. Section **77-43-106** is enacted to read:

### **77-43-106. Penalties.**

(1) An offender who knowingly fails to register under this chapter or provides false or incomplete information is guilty of a third degree felony and shall be sentenced to serve a term of incarceration for not less than 90 days and also at least one year of probation.

(2) Neither the court nor the Board of Pardons and Parole may release a person who violates this chapter from serving the term required under Subsection (1). This Subsection (2) supersedes any other provision of the law contrary to this chapter.

(3) The offender shall register for an additional year for every year in which the offender does not comply with the registration requirements of this chapter.

Section ~~{15}~~14. Section **77-43-107** is enacted to read:

### **77-43-107. Classification of information.**

Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, information under Subsection 77-43-103(4) that is collected and released under

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Subsection 77-43-108(4) is public information, unless otherwise restricted under Subsection 77-43-103(1).

Section ~~{16}~~15. Section **77-43-108** is enacted to read:

### **77-43-108. Child Abuse Offender Registry -- Department to maintain.**

(1) The department shall maintain a Child Abuse Offender Notification and Registration website on the Internet, which shall contain a disclaimer informing the public:

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

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

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

(2) The Child Abuse Offender Notification and Registration website shall be:

(a) indexed by both the surname of the offender and by postal codes; and

(b) linked with the Sex and Kidnap Offender Registry as created in Title 77, Chapter 41.

(3) The department shall construct the Child Abuse Notification and Registration website so that users, before accessing registry information, must indicate that they have read the disclaimer, understand it, and agree to comply with its terms.

(4) Except as provided in Subsection (~~{5}~~6), the Child Abuse Offender Notification and Registration website shall include the following registry information:

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

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

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

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

(e) a current photograph of the offender;

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

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

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

(i) the crimes listed in Subsection 77-43-102(2) that the offender has been convicted of or for which the offender has been adjudicated delinquent in juvenile court.

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

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

Section ~~{17}~~16. Section **77-43-109** is enacted to read:

### **77-43-109. Fees.**

(1) Each offender required to register under Section 77-43-105 shall, in the month of the offender's birth:

(a) pay to the department an annual fee of \$100 each year the offender is subject to the registration requirements of this chapter; and

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

(2) Notwithstanding Subsection (1), an offender who is confined in a secure facility or in a state mental hospital is not required to pay the annual fee.

(3) The department shall deposit fees collected in accordance with this chapter in the General Fund as a dedicated credit, to be used by the department for maintaining the offender registry under this chapter and monitoring offender registration compliance, including the costs of:

(a) data entry;

(b) processing registration packets;

(c) updating registry information; and

(d) ensuring offender compliance with registration requirements under this chapter.